109-103

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~211.~~ 43

ROBERT C. HEWETT, APPELLANT,

vs.

PETER CAMPBELL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED SEPTEMBER 22, 1880.

SUPREME COURT OF THE UNITED STATES.

No. 271.

ROBERT C. HEWETT, APPELLANT,

vs.

PETER CAMPBELL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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1 In the Supreme Court of the District of Columbia.

SAMUEL CEAS
vs.
GEORGE BURGESS, MARY H. P. BURGESS, Peter Campbell, and William R. Slater. } 5767. Equity.

To the honorable justices of said court:

The plaintiff states as follows:

1. He is a citizen of said District, and brings this suit in his own right as a judgment creditor of the above-named defendant, George Burgess.

2. The defendants are also citizens of said District, and are sued, defendants George Burgess, Mary H. P. Burgess, and Peter Campbell, in their own right, and defendant William R. Slater as trustee named in a certain deed of trust hereinafter mentioned.

2 3. And the plaintiff further avers that on the 7th day of February, A. D. 1877, one George Truesdell recorded judgment on the law side of this court against said George Burgess and this plaintiff for $200.00, with interest at the rate of ten (10) per cent. per annum from October 10th, 1876, till paid, and $1.95 fees of notary for protest, and $19.65 for his costs of suit, upon a promissory note drawn by said Burgess, on which plaintiff was an accommodation endorser for said Burgess. And the plaintiff says that he has paid said Truesdell said judgment, interest, and costs, and has had the same entered to his use. A writ of fieri facias has been issued upon said judgment directed to the U. S. marshal for said District, who has returned the same endorsed "nulla bona," as will appear from a short copy of said judgment hereto annexed marked S. C. No. 1.

Ex. S. C. No. 1.

Clerk's office, supreme court of the District of Columbia.

GEORGE TRUESDELL, USE OF SAMUEL CEAS,
vs.
GEORGE BURGESS AND SAMUEL CEAS. } 16882. Law.

1877, Feb. 7.	Judgment, by default for	$200 00
	Interest on, at 10 %, from Oct. 10th, 1876, t. p...	
	Costs of protest	1 95
	Costs of suit	19 65
	Short copy	50

Test:

R. J. MEIGS, *Clerk*,
By J. JAY CAMP, *Asst. Clk.*

AUG. 22ND, 1877.

3 4. And the plaintiff further says that on the 5th day of July, 1877, he recorded judgment against said George Burgess on the law side of said court for $1,136.87, with interest on $936.87, at 10 per cent. for ninety days, from June 16th, 1874, and thereafter at 6 % per cent. And

on $200.00 at eight (8) per cent. from April 16th, 1875, till paid, and 16.85 for costs of suit. On this judgment a writ of fieri facias has been issued directed to the U. S. marshal for said District, who has returned the same endorsed "nullla bona," as will more fully appear, reference being had to a short copy of said judgment hereto annexed, marked Exhibit S. C. No. 2.

Ex. S. C. No. 2.

Clerk's office, supreme court District of Columbia.

SAMUEL CEAS
vs.
GEORGE BURGESS. } No. 17917. Law.

1877, July 5.	Judgment by default for.....	$1,	136 87
	Interest on $936.87 at 10 % for 90 days, from June 19, '74, then 6 % till paid, & on $200.00 at 8 % from Apr. 16, '75, till paid.....		
	Costs of suit.....		16 85
	Short copy.....		50
1877, Aug. 17.	Fi. fa. issued.		
" " 22.	" "returned, "nulla bona."		

Test:

R. J. MEIGS, *Clerk*,
By J. JAY CAMP, *Asst. Clk.*

AUG. 22, 1877.

4 5. And the plaintiff further avers that said George Burgess has no real or personal property within the jurisdiction of this court subject to execution at law, but that he has equitable interests in certain real estate hereinafter mentioned, sufficient if, sold, to more than satisfy said judgments.

6. And the plaintiff further avers that prior to the first day of April, A. D. 1876, said George Burgess, then quite extensively engaged in building operations, determined to build on speculation a row or block of brick dwelling in Q street north, between 13th and 14th streets west in Washington in said District, and in furtherance of such determination purchased of John and Edward Cammack, certain building lots in square 240 fronting said Q street, among the rest lots 54, 75, and 84 in Chipman, Exley, and Richards' subdivision of said square, and in order that he (said Burgess) might not be embarrassed by his creditors, who at that time were pressing him for payment of their demands, fraudulently caused the said lots 54, 75, and 84 (as well as other lots in said square) to be conveyed
5 to his wife, defendant, Mary H. P. Burgess, who in connection with her husband, the said George Burgess, encumbered the same with sundry deeds of trust to secure purchase-money, which as to said lots 54, 75, and 84, have been released.

7. On the 11th day of July, 1876, said Mary H. P. Burgess and her husband, said George Burgess, by deed duly recorded in liber No. 825, folio 153, one of the land records of said District, conveyed said lot 75

to one William H. Doe (brother-in-law of said George Burgess), who subsequently, to wit, on the 26th day of August, 1876, and at the request of said George Burgess, conveyed the same to Peter Campbell, by deed duly recorded among said land records, in liber No. 826, at folio 399 et seq.

8. On the 25th day of October, A. D. 1876, said Mary H. P. Burgess and her husband, said George Burgess, by deed duly recorded among said land records, in liber No. 834, at folio 370 et seq., conveyed said lot 84 to defendant Peter Campbell.

9. On the 10th day of February, 1877, said Mary H. P. Burgess
6 and her said husband, and at his instance and request, pretended to convey said lot 54 to defendant Slater, trustee, in which conveyance the recital as to indebtedness is as follows: "Whereas said George Burgess has made and executed four certain promissory notes, each for the sum of , with these presents, and payable to the order of himself, four months after date, with interest at the rate of ten per cent. per annum until paid, and payable at the Citizens' National Bank, of Washington, D. C., and being desirous to secure the punctual payment of said notes when and as the same shall become due and payable, with interest and costs due and accruing thereon, as well as any renewal or extensions thereof, executes these presents," as will more fully appear, reference being had to said conveyance, duly recorded among said land records, in liber No. 842, at folio 356 et seq.

In respect of the above-mentioned transaction, the plaintiff says he is informed and believes, and so avers, it was part of a scheme between said Campbell and said George Burgess whereby the latter should be enabled to
7 elude, mislead, and defraud his creditors, and that in truth and fact no money was advanced by said Campbell, or by any other person, to said George Burgess, on the security thereof, yet said Slater, styling himself "trustee," and professing to act "at the request of the holder of the note secured thereby" (but as the plaintiff is advised and believes, and so avers in furtherance of said scheme), about the day of pretended to sell said lot 54, to said Campbell for $1,750.00, as will more fully appear from a paper-writing purporting to be his deed for said lot, duly recorded the in liber No. at folio et seq., one of said land records. Plaintiff further says he is advised and believes, and so avers, that if the conveyance from said Mary H. P. Burgess et vir to said Slater was not wholly void, it was so defective that no valid title to said lot 54 could be made under it. And the plaintiff further says he is advised and believes, and so avers, that notwithstanding the transfer of said lots 54, 75, & 84, as aforesaid, by deeds aforesaid on their face, and for, apparently, adequate consideration, there is a secret understanding and agree-
8 ment between said Campbell and Burgess, to the effect that when the latter shall have reimbursed the former, all moneys advanced by him in respect of his building operations, said lots with improvements are to be reconveyed to him in fee, free of incumberance. And the plaintiff says he is advised and believes, and so avers, that said Burgess, in the course of his dealings with said Campbell, has fully repaid him all moneys advanced as aforesaid, and is now entitled to have said Campbell reconvey said lots.

10. And the plaintiff further avers, that in the dealings between said Campbell and George Burgess, the former charged and received of the

latter interest at ruinously usurious rates, amounting, as plaintiff is advised and believes, to $3,000.00 or more.

11. Respecting the part defendant Mary H. P. Burgess appears to have taken in relation to said lots 54, 75, & 84, the plaintiff says he is advised and believes, and so avers, that at the time said lots were conveyed to her by the Cammacks, as hereinbefore stated, she was possessed of no separate
9 estate, and paid no part of the purchase-money, but gave her promissory note' for the entire amount thereof; said notes were paid by virtue of an agreement between the Cammacks and said George Burgess, in relation *in relation* to said building lots to the effect that two (2) of said lots at a time were to be conveyed to said Mary H. P. Burgess, and simultaneously a deed of trust upon them both, given to secure purchase-money, one of which lots was to be released from said incumberance on said George Burgess having completed a dwelling-house of certain dimensions on the other; others by sales under said deeds of trust, and others by said George Burgess, with money derived from other sources than his wife.

12. And the plaintiff further says that the several transfers of said lots 54, 75, & 84 has had the effect of hindering and delaying him in collecting said judgment.

Wherefore he prays—

1st. That the persons named as defendants on the first page of
10 this bill be made defendants thereto, and required to answer the premises.

2d. That an account be directed between defendant George Burgess and Peter Campbell in relation to their dealings hereinbefore mentioned, and if, as a result thereof, it be made to appear that said Burgess has repaid said Campbell all monies advanced by him in respect of said dealings, and is thereby entitled to a reconveyance of said lots 54, 75, and 84, that said Campbell be decreed to reconvey said lots to said Burgess, or if it shall appear that said Campbell has not been fully reimbursed for all monies advanced by him on the security of said property, then that the deeds to said Campbell aforesaid be declared to be mortgages to the extent of all monies that may be due him from said Burgess, and in this event the equity of redemption of said Burgess be subjected to the payment of said judgments.

3. That defendant Campbell may be requested in his answer to this
11 bill to render a detailed statement of his dealings with said Burgess in respect to advances made him in aid of his building operations.

4. That he may be required to discover and set forth in his answer what rate of interest he charged said Burgess on the several sums of moneys advanced him.

5. That pending this suit said Campbell be restrained and enjoined from selling, or encumbering, or in any manner disposing of lots 54, 75 & 84.

And that the plaintiff may have such other and further relief as the nature of his case may require.

And may it please your honors to grant unto the plaintiffs the U. S. writ of subpœna to be directed to defendants, commanding them, &c.

The defendants eo this bill are the persons named as such on the first page thereof.

SAMUEL CEAS.

12 I, Samuel Ceas, on oath, depose and say: I have heard read the foregoing bill by me subscribed, and know the contents thereof; that the facts therein stated from my personal knowledge are true, and that the facts therein stated from information and belief, I believe to be true.

SAMUEL CEAS.

Subscribed and sworn to before me this 24th day of August, A. D. 1877.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't. Clk.*

13 *Subpœna to answer.*

In the supreme court of the District of Columbia, the 24th day of August, 1877.

SAMUEL CEAS, COMPLAINANT, *against* GEORGE BURGESS ET AL., DEFENDANTS. } No. 5767. Eq'y dock. 17.

The President of the United States to George Burgess, Mary H. P. Burgess, Peter Campbell, William R. Slater, defendants:

You are hereby commanded to appear in this court, at its first special term, occurring twenty days after service of this subpœna, and answer the exigency of the bill this day filed and entitled as above, under pain of attachment and such other process of contempt as the court shall award.

Witness, D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

MEMORANDUM.—That the defendant', herewith served, is to enter their appearance in this suit in the clerk's office, on or before the day at which this writ is returnable, otherwise the bill may be taken for confessed.

14 Summoned W. H. Slater and Peter Campbell, Sept. 7th, 1877.
F. DOUGLASS, *Marshal.*

Summoned George Burgess and wife, Oct. 20th, 1877.
F. DOUGLASS, *Marshal.*

15 In the Supreme court of the District of Columbia, the 8th day of October, 1877.

SAMUEL CEAS, PLAINTIFF, *vs.* GEORGE BURGESS ET ALS., DEFENDANTS. } In equity. No. 5767. Docket 17.

To the honorable judge of the supreme court of the District of Columbia, holding the special term as equity court:

Your petitioner respectfully represents that he is a citizen of the District of Columbia, and did on the 4th day of October, 1877, obtain a judgment for $5,080.25, with interest and costs, on the law side of this

court, against George Burgess and Henry H. Tallmadge, and entered upon the records of this court and entitled Robert C. Hewett vs. George Burgess and Henry H. Tallmadge, No. 18333; that a writ of fieri facias was duly issued against said defendants, and returned by the marshal, "nulla bona," as to both of them, and he has not received nor been paid the whole or any part of said judgment by either of said defendants. A short copy of said judgment is annexed hereto and prayed to be taken as a part hereof.

16 *Short copy.*

Clerk's office, supreme court of the District of Columbia.

ROBERT C. HEWETT
vs.
HENRY H. TALLMADGE AND GEORGE BURGESS. } No. 18333. Docket.

1877, Oct. 4; judgment for pl'ff for $5,080.25, with 10 % interest from April 23, 1877, until paid. Costs of suit, $17.45. Oct. 5, fi. fa. issued & ret'd "nulla bona."

Test:

R. J. MEIGS, *Clerk*,
By J. R. YOUNG, *Asst. Clerk.*

OCT. 8, 1877.

And he prays that he may be allowed to become a party complainant in the above cause, as a judgment creditor of the said defendant George Burgess, and have all the benefits and privileges of the suit equally as if he were a party to the original bill, and be entitled to all processes, orders, and decrees as may be necessary to enable him to make good his
17 complaint, and allowed to bear his proportion of the expenses and costs of this suit.

That his judgment be declared a lien upon any equitable estate or interest the said defendant George Burgess may or does possess in the property set forth in the above-mentioned bill, and his judgment, with interest and costs, may be paid out of such interests and moneys as may be obtained or realized from the sale of the property set forth in the original bill of complaint, or any other property which may be discovered or added to said bill of complaint in the course of the proceedings.

And that he may have such other and further relief in the premises as the nature of the case may demand or require.

R. C. HEWETT.

E. B. HAY, *Solicitor for Petitioner.*

18 DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the petition by me subscribed and know the contents thereof, and that the facts therein stated, upon my personal knowledge, are true, and that the facts therein stated, upon information and belief, I believe to be true.

R. C. HEWETT.

Subscribed and sworn to before me this 8th day of October, 1877.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR., *Ass't.*

19 R. E. Hewett is allowed to become party complainant as a judgment creditor of defendant.

By order of the court.

A. B. OLIN.

20 In the supreme court of the District of Columbia.

SAMUEL CEAS
vs.
GEORGE BURGESS ET AL. } In equity. No. 5767.

The separate answer of Peter Campbell, one of the defendants to the bill filed in the above-entitled cause.

This defendant, saving and reserving unto himself now, and at all times hereafter, all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

He admits the citizenship of plaintiff to be as stated.

He admits the citizenship of defendants.

He admits so much of the allegations of the third paragraph of said bill in reference to the judgment recovered by George Truesdell against George Burgess, as appears upon the record of said judgment.

21 As to all other matters set forth in said paragraph, if material to plaintiff's case, this defendant requires strict proof.

He admits the Exhibit S. C. No. 2 to be a copy of the docket or judgment entries, as stated in the fourth paragraph of said bill.

In answer to the fifth paragraph of said bill this defendant says that he does not know whether the said George Burgess has real or personal property within the jurisdiction of this court subject to execution by law or not, and requires strict proof that he has none, if such proof is material to plaintiff's case. This defendant denies that the said George Burgess has now, or had at the time of the filing of said bill, interests of any kind, equitable or otherwise, in the real estate referred to in said fifth paragraph, and avers that this defendant was the owner thereof in fee simple.

This defendant has no knowledge of the allegations of the 6th paragraph of said bill, and can neither admit or deny the same, but requires strict proof of the truth thereof if said allegations be material to plaintiff's case.

22 This defendant admits the allegations of the 7th paragraph of said bill to be true; that said Mary H. P. Burgess and her husband, the said George Burgess, did convey said lot 75, in square 240, to Wm. H. Doe, who conveyed the same to this defendant in fee simple, and, as this defendant avers, by a good and sufficient deed, for a valuable consideration, without notice of any right or claim of plaintiff in or upon the same, if such he had, which defendant denies.

This defendant admits that Mary H. P. Burgess and her husband conveyed lot 84, in square 240, to this defendant as alleged in said bill, and he further says that said lot 84 was conveyed to him in fee simple, bona fide and for a valuable consideration, without notice on his part of any claim or demand of the plaintiff upon the same, if any he has or ever had.

This defendant denies the inuendo implied by the word "pretended," used in the 9th paragraph of said bill, and answering the same, this defendant says that said Mary H. P. Burgess and her husband intended to and did convey lot 54, square 240, to defendant William R. Slater,
23 by deed of trust recorded in liber 842, fol. 356, upon the trusts set forth in said deed; that the several notes mentioned in said deed of trust, and intended to be secured thereby, were for the sum of one thousand dollars each, as will appear from the original of said deed, which defendant is ready to produce when required; that the said notes were given to this defendant as security for advances made upon the faith thereof. He denies that the giving of the said deed of trust was part of a scheme between said Burgess and this defendant whereby said Burgess should be enabled to elude, mislead, and defraud his creditors. On the contrary, he says said notes were given for advances of money made by this defendant in good faith, and that at the time of the sale of said lot 54 by said Wm. R. Slater, as trustee under said deed of trust, this defendant was the bona fide holder of said notes for value, without notice of the claims or demands of any other person in and upon the same. And, denying the inuendo contained in the said paragraph of said bill, that said Slater, as trustee under said deed of trust, did not
24 sell said lot 54, sq. 240, but pretended so to do, this defendant says that said defendant Slater did sell said lot 54, sq. 240, to this defendant, in pursuance and by virtue of said deed of trust, and did convey the same to this defendant for the sum of $1,750, by a good and sufficient deed, as will appear by reference to the same as the said deed is recorded in liber No. 866, folio , which liber is referred to but not mentioned in said bill. And he further says he is advised that the said deed from Slater, trustee, conveyed to this defendant a good and valid title in fee simple, and that said sale and deed terminated all right, interest, or estate of said Mary H. P. Burgess or George Burgess (if any estate or interest the said George Burgess ever had therein) in and to said lot 54, sq. 240, and that the said sale and deed is a bar to this bill so far as it seeks to satisfy the plaintiff's claim by the sale of said lot 54, and this defendant asks the same benefit from this objection as if he had made the same specially by plea or demurrer.

This defendant denies that he has now or ever had any agree-
25 ment with said Burgess whereby he agreed to reconvey said lots 54, 75, and 84 to said Burgess, and he denies that he ever by any agreement in writing signed by him or his agent, as required by the statute in such case made and provided for a valid agreement, agreed to convey said lots or either of them to said Burgess, and defendant asks the same benefit of this his objection as if the same had been specially taken by plea or otherwise. This defendant denies that said Burgess has repaid this defendant all the money advanced by this defendant to said Burgess. And he denies that said Burgess is entitled to have this defendant convey or reconvey said lots or either of them to him or to any other person or persons.

To so much of said bill as charges that this defendant in his dealings with said George Burgess charged said Burgess and received from him interest at ruinously usurious rates amounting to $3,000, this defendant, not in any wise admitting the charges to be true, demurs and says that he

ought not to be required to answer the same, and for causes of demurrer, says:

26 1st. That said allegation is immaterial to plaintiff's case and an answer thereto can be of no avail for the purposes for which the same is sought.

2nd. That said allegation, if true, would or might subject this defendant to pains, penalties, or forfeiture, and defendant ought not, therefore, to be required to answer the said allegation.

The defendant has no personal knowledge of the part taken by Mary H. P. Burgess in her dealings with the Cammacks, and can neither admit or deny the allegations with reference thereto, but if material to plaintiff's case defendant requires strict proof thereof.

The defendant denies that the said several conveyances of said lots 54, 75, and 84 has had the effect of hindering and delaying plaintiff in collecting the judgments mentioned in said bill.

And having fully answered the allegations of said bill, this defendant, further answering, says that the plaintiff by his said bill has not stated a case to entitle him to the relief asked for in and by the 2nd and 5th prayers of said bill, and he asks the same benefit of this his ob-

27 jection, as if he had taken the same specially by plea or demurrer.

And the defendant demurs to the discovery sought by the 3rd and 4th prayers of said bill, and for causes of demurrer says:

1st. That the discovery thereby prayed for is immaterial to the case made by the bill.

2nd. That the discovery sought by 3rd and 4th prayers is sought for the purpose of establishing facts which, if true, might subject defendant to forfeiture, or that which is in the nature of a forfeiture. And, further answering, this defendant says said bill is so vague, uncertain, and contradictory in its statements, that this defendant is advised that he ought not to be required more particularly to point out his objections to said bill. And he says that he purchased said lots 54, 75, and 84 bona fide for a valuable consideration, without notice of any claim or demand of said plaintiff. And relying upon the deeds made to him for said property as conveying to him a good title to said lots, this defendant has expended large sums of money in finishing and completing the

28 unfinished houses that were on said lots when said lots were respectively conveyed as aforesaid to this defendant, who believes from his information that this suit is brought by said plaintiff (he well knowing that said Burgess has no interest in said lots) for the purpose of embarrassing this defendant and preventing this defendant from disposing of said property, and thereby extracting from him the payment of money for the dismissal of this suit, which forms, so long as it is pending, a cloud upon defendant's title and a clog upon his free use and disposal of said property.

And having fully answered, &c., the defendant prays to be hence dismissed with his costs, and he will ever pray, &c.

PETER CAMPBELL.

WILLIAM A. COOK,
Sol'r for Def't Campbell.

W. E. EDMONSTON,
Sol'r for Def'd't.

This affiant makes oath that he has read the answer above written, signed by him, and knows the contents. That the matters
29 therein stated upon his knowledge to be true are true, and those matters therein stated upon his information and belief he believes to be true. That the demurrer interposed to part of the bill filed in this cause is not interposed for the purposes of delay.

PETER CAMPBELL.

Subscribed and sworn before me Oct. 29, 1877.

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Ass't Clerk.

We hereby certify that the demurrer interposed to part of the bill in this cause is in our opinion well founded in point of law.

WILLIAM A. COOK,
for Campbell.
W. E. EDMONSTON,
Sol'rs for Defendant.

30 In the supreme court of the District of Columbia.

SAMUEL CEAS
vs.
GEORGE BURGESS ET AL. } In equity. No. 5767.

The separate answer of William R. Slater to the bill filed in the above-entitled cause.

This respondent, answering so much of said bill as he is advised it is material and necessary for him to answer, says:

He admits the residence of the parties to said bill to be as therein stated in the 1st and 2nd paragraphs of said bill.

He admits, as charged in the 8th paragraph of said bill, the giving of a deed of trust to this respondent, by said George Burgess and his wife, on lot 54, square 240, and he refers to the original of said deed for its contents, not admitting the correctness of the perported extract therefrom as given in said 8th paragraph of said bill, of which he requires proof if necessary to plaintiff"s case. This defendant was informed, and so be-
31 lieved that the notes secured by said deed of trust were given bona fide for a valuable consideration, and when they became due and were not paid, this respondent, at the request of the holder of said notes, proceeded to sell said lot 54 in pursuance of the terms of said trust, and did, at the time and place advertised for said sale to take place, sell the said lot at public auction to Peter Campbell, who was the highest and best bidder therefor, at seventeen hundred and fifty dollars, and the said purchaser having complied with the terms of sale, this respondent, as trustee as aforesaid, executed and delivered to said purchaser a deed conveying said lot to him in fee simple, as will appear by said deed recorded, in Liber 866, folio , one of the land records of the District of Columbia, to which respondent asks leave to refer at the hearing, if necessary, as a part of this an-

swer, and he submits that said deed to said purchaser passed a good and valid title to said lot 54.

And this respondent having answered all of said bill that he is advised it is material for him to make answer to, asks to be hence dismissed with his costs, &c.

WILLIAM R. SLATER.

W. E. EDMONSTON,
WILLIAM A. COOK,
Sol'rs for Slater.

32 In the supreme court of the District of Columbia.

CEAS *vs.* BURGESS ET AL. } No. 5767. Eq. doc. 17.

It appearing that defendant' George and Mary H. P. Burgess were served with process to answer the bill of complaint in above-entitled cause, on the 20th day of October, 1877, and that they have failed to appear, answer, plead, or demur thereto, it is therefore, this 3rd day of December, 1877, ordered that the said bill of complaint be and the same is hereby taken for confessed as against said defendants.

By the court.

A. WYLIE, *Justice.*

33 In the supreme court of the District of Columbia.

CEAS *vs.* BURGESS ET AL. } In equity. No. 5767. Doc. . For complainant.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that at an examination of witnesses, begun and held on the 9th day of January, A. D. 1878, and continued from time to time by , until the 2nd day of July, A. D. 1878, when the within depositions were taken; I, John J. Johnson, an examiner in chancery, did cause to be personally present, at my office, No. 342 D st., in the city of Washington, in said District, the within-named witnesses to testify on the part and behalf of the complainant, in a certain cause now depending in the supreme court of the District of Columbia, wherein Ceas is complainant and Burgess et al. defendants.

JOHN J. JOHNSON, *Examiner.*

34 CEAS *vs.* BURGESS. } No. 5767. Equity.

JANUARY 9, 1878.

Met pursuant to notice. Present, counsel for complainant. Also present, complainant and defendant, when SAMUEL CEAS, being duly sworn, says:

I am complainant to this suit. I know the defendants in this suit.
(Witness looks at Exhibit S. C. No. 1, to his bill, and says:
I am the Samuel Ceas to whom that judgment is entered to the use of.
(Witness looks at Exhibit S. C. No. 2, to his bill, any says:
I am the Samuel Ceas, the plaintiff in that case.

The indebtedness for which this last judgment was obtained was for money loaned as far back as 1872, that is $936.87, of said judgment, and $200 for money loaned as far back as April 16th, 1875. The original, $936.87 occurred in 1872, but was renewed from time to time till June, 1874.

I was an accommodation endorser for Burgess, under the first Ex-
35 hibit S. C. No. 1. I paid the judgment in full with interest and cost, and had it entered to my use. I have not received anything on account of either of those judgments, nor anything as security for them.

SAMUEL CEAS.

Sworn and subscribed to before me this 9th day of January, 1878.
JOHN J. JOHNSON, *Examiner.*

Adjourned till Tuesday, the 15th inst., at 11 a. m.
J. J. JOHNSON, *Examiner.*

36 Met pursuant to above. Present, counsel on both sides, when Mr. HEWETT, being duly sworn, says:

My name is Robert C. Hewett; I am a party to this cause No. 18333; I originally held two notes against Mr. Burgess, $4,000 each, the original amount.

The judgment filed in this cause is the result of that note. I tried to get the money on the notes. I received altogether from the time I lent the money to the present time $5,000. The judgment for $5,080.28 with ten per cent. interest from April 27, 1877, till paid, and costs, is the balance due on the two notes, and endorsed a certain note for Mr. Burgess for $255, and which I had to pay. I also gave Mr. Burgess an order on Mr. Fugett for about $500 for lumber, and some small loans I gave him. All of which made up the amount of the judgment.

(Mr. Hay here introduced the short copy of said judgment, as evidence of said judgment and costs, and the return of nulla bona to the fi. fa.)

Cross-examined by Mr. EDMONSTON:

The two houses upon which the original loan was made is not
37 the property described in the bill.

R. C. HEWETT.

Sworn and subscribed to before me this 15th of January, 1878.
J. J. JOHNSON, *Ex'r.*

SAMUEL CEAS cross-examined by Mr. EDMONSTON, as follows:

Q. You state that $200 of the judgment in your favor against Burgess, for money loaned as far back as April, 1875. Please state whether a note was given for that $200.

A. It was; and I put it in Ruff's bank. I may be mistaken, but I think it was for $200. I think I gave the notes to Mr. Hine.

Q. Please state how you paid that loan, by check or cash?

(Objected to as immaterial and irrelevant.)

A. My opinion is I paid it by check, as I always, nearly, pay by check.

Q. Were you paid anything as a bonus beyond the ordinary interest called for by the note?

(Objected to for the same reason.)

38 A. I presume on that particular one I did give him something less. The check will show.

Q. In regard to the $936.87, was not for the loan of that money an interest of more than ten per cent. exacted?

(Objected to as having been settled by the judgment.)

A. The real way the $936 came to be that much was that Pratt and I were operating together in buying paper. That money belonged to us both, and I suggested to Pratt that we loan it out for ten per cent. interest. We gave, loaned, to him and took his note for $1,600. It is possible it was given for 90 days and renewed from time to time. My partner and I wound up business, and we divided the notes. I never charged a bonus for the renewal of the notes.

Q. When this note was renewed from time to time, did you or not pay a bonus for the renewal?

(Objected to as irrelevant and incompetent.)

A. Well, if I did it would be between 1872 and 1874. I presume we did, as it strikes my mind at that time we were taking it.

39 (All the foregoing testimony relating to these judgments referred to is objected to as immaterial and incompetent.)

SAMUEL CEAS.

Sworn and subscribed to before me this 15th of January, 1878.

J. J. JOHNSON, *Examiner.*

GEORGE BURGESS, being duly sworn, says:

I am one of the defendants in this cause. I am acquainted with the other defendants. I have known the defendant Peter Campbell about eight or ten years. I knew the defendant Slater in his life-time. I had known him about two or three years. He and Mr. Campbell were acquainted. Mr. Campbell is a broker and money-lender and banker in this city. He has been thus engaged three or four years; I am not positive; may be longer. Mr. Slater in Mr. Campbell's office as an assistant, acting in the capacity of clerk, I suppose. For the last two years I have been engaged principally in building dwelling houses in the northwestern portion of the city, in squares 209, 240, and 241. I put 24 houses under roof

40 on square 240, 20 houses on Q street, and 4 houses on R street. I partially built 8 houses on square 241, 2 on square 209, 10 on square 150.

Previously to erecting the houses on square 240, the ground belonged to John and Edward Cammack. The Cammacks conveyed nearly all of the lots to my wife. The lots mentioned in the bill were conveyed to my wife.

Q. Under the transfer of the Cammacks to your wife of lots 54, 75, and 84, square 240, was there any money paid or not?

A. No money was paid at the time of purchase.

Q. How was the purchase money evidenced?

A. By a note of my wife, secured by a deed of trust.

Q. Did the notes of your wife represent the entire amount of the purchase money?

A. Yes.

Q. Have these purchase-money notes been paid as to lots 54, 75, & 84?

A. As to lot 54, a note was given for the purchase money of that and lot 53. When the houses were put up and roofed in, lot 54 was
41 released from that trust given for the purchase money, and they held the security on lot 53.

Q. Are we to understand that this was a part of the agreement between yourself and the Cammacks in relation to the purchase of these lots in square 240?

A. Yes.

Q. Did the same agreement apply to lots 75 and 84, in the same square?

A. Pretty much the same.

Q. Did you carry out your part of the agreement?

A. I carried it out far enough to get releases of nearly every alternate lot. I think the purchase money of lot 75 was released, and lot 74 held as security for the purchase money of 75 and 74, and the purchase money of lot 84 was released and the trust held on lot 83.

Q. It appears by the record that your wife and yourself, on the 11th of July, 1876, conveyed said lot 75 to Wm. H. Doe; did you and your wife make such a conveyance?

A. We did.

Q. What relation, if any, is Wm. H. Doe to you or your wife?
42 A. He married my sister.

Q. In what business, at the time, was Wm. H. Doe engaged?

(Objected to irrelevant.)

A. He was a clerk in the Navy Department.

Q. What was the real consideration for that deed, if you recollect?

(Objected to.)

A. There was no consideration passed.

(Answer objected to.)

Q. It also appears upon the land records that on the 26th of Aug., 1876, Wm. H. Doe conveyed said lot to the defendant Peter Campbell. Do you know anything about that conveyance, and the , if any, it was made, and at whose request it was so made?

(Objected to as irrelevant and inadmissable, for the reason that Doe is not a party to the suit.)

A. I requested Mr. Doe to make it, and it was understood between Mr. Campbell and myself that Mr. Campbell was to put a trust on the property for the purpose of borrowing some money from Mr. Riggs' bank.

(Answer objected to because irrelevant, and because the under-
43 standing, if any such existed, was not evidenced by any agreement in writing signed by the defendant Campbell.)

Witness, resuming, says: My recollection is that Mr. Campbell said he could get $3,000 on that property from Mr. Riggs' bank for 90 days at 8 %, and shortly after that we had a statement of account, and I signed some paper which, I think, Mr. Campbell has or kept at that time. I think the paper sets out that upon the repayment to him of the money I

was to have the property. That was the agreement, whether the paper sets it out or not, as far as I now recollect.

(The last part of the answer objected to, because not responsive to the question, irrelevant, and inadmissable, and not reduced to writing, and not signed by the defendant.)

Q. In relation to the money, you say Mr. Campbell proposed to borrow from Mr. Riggs. Do you know for whose benefit that loan was to be made?

(Objected to as irrelevant.)

A. I understood it to be principally for my benefit.

44 Q. Did Mr. Campbell obtain any money from Mr. Riggs on that transaction, or from any other source?

(Objected to as irrelevant.)

A. I understood at the time he did.

Q. How much?

A. $3,000.

Q. Do you recollect of that $3,000 how much you got?

A. No, sir.

Q. Did you get any of it?

(Objected to.)

A. I think I did; I got some money of him about that time.

Q. About how much?

A. I can't say without referring to my books and account.

Q. Will your books and account show it?

A. I think they will show pretty much the moneys received.

Q. Have you your books and accounts with reference to this transaction with you to-day?

A. I have memorandum books that I kept.

Q. Are they the books and accounts you refer to?

A. Yes.

Q. Will you produce them?

A. I will; I now produce it.

45 Q. Now, look at the entries of the transactions in that book in relation to said lot 75, and tell us what amount of money you received from Campbell about that time.

(Objected to for the reasons above stated.)

A. My books show that on the 1st day of Sept., 1876, received from Mr. Campbell on lot 75, for 90 days, $425 in money; $75 in commissions, making $500. It is considered I received the $500 and paid the other back as commissions. In fact, I only got $425.

Q. Is that all in relation to this?

A. I will say here I commenced receiving money of Mr. Campbell in April, 1876, and continued to get money from him on different times for nearly one year. I think I could show the amounts received from him during that period, or nearly all of them, and the amounts he received in payments therefor.

Q. On the first of September, 1876, you say you received $425 from Mr. Campbell. What evidence did you give him that you had received that amount of money?

A. I don't recollect, because I frequently got money without

46 giving anything at the particular time, because he held collaterals of mine. I think he gave me a check for $1,700 at one

without my giving him anything for it at the particular time.

Q. You have said that you commenced to borrow money from Mr. Campbell on April, 1876, and that you continued to borrow money of him from time to time for nearly a year. Have you any record of the amounts of money you thus received of him; and, if yea, thus produce it.

(Objected to as irrelevant.)

A. I usually put down the amounts in my memorandum book.

Q. In the memorandum book that you have produced here?

A. That is one of them.

Q. Take up those books from the beginning, and give us every item of money they show you received from Mr. Campbell, with the dates thereof, from the commencement to the end of your dealings with him.

(Objected to, because inadmissible and not *ir*relevant to the issues
47 made by the pleadings, and because the proper foundation has not been laid to give said evidence.)

A. I received on the 6th of April, 1876, $200 on a note of C. H. Burgess for $210, at 30 days, and endorsed by myself and R. C. Hewett. On the 15th of April, 1876, I received of Mr. Campbell on my note, at 30 days, of $1,200, secured by a deed of trust on lot 68 & 69, in square 240, $1,140. That was the amount less the discount. On the 22nd of April, '76, I received of Mr. Campbell, I think, $1,300, the discount to be taken off. April 29th, '76, I received of him $291, and gave him my note, at 18 days, for $300. May 6th, '76, I received of him $475 in money, he charging me $25 for it. May 8th, I got $500, less the commissions, which were $25. May 17th, 1876, I received of him a loan of $300. May 20th, 1876, I received of him $300, less commissions $45; that was at 90 days. I got $255 in money, and gave a receipt for $300. May 27th, 1876, I received of him in money $1,700; also $425, and commissions $75. I think for the $1,700 I allowed him $2,000. June 1st, 1876,
I received $500, less $75 commissions. June 9th, 1876, I received
48 $200. I don't think I gave him anything for this. June 10th, 1876, I received of him $800, less $150 commissions. June 14th, 1876, I received of him $500, 90 days, less commissions, $75. June 24th, 1876, I received of him $900, a loan of 30 days, and gave him $50 as bonus. July 8th, 1876, $2,158.50. The commissions of $410.75 came out of this sum. July 15th, 1876, $300. July 18th, 1876, received of him, per Slater, $155. July 22nd, 1876, received of him, per W. Slater, check for $1,000. July 24th, 1876, received of Campbell, per Slater, $275. Aug. 19th, 1876, $600, less $60 commissions. Aug. 21st, 1876, received of Campbell, $100. Aug. 24th, 1876, Peter Campbell, cash paid to Moulton for me, $805, less $105 commissions. Sept. 1st, 1876, $500, less $75 commissions, being the sum referred to heretofore on lot 75.

About that time we had a sort of statement of account. There was a rest. Sept. 16th, 1876, I received of him on my note at 30 days, endorsed by Tallmadge, $665; the note is for $700. Sept. 26th, 1876, I received of him or George Augheton's note for $110; I got $105. On the 30th Sept. 1876,
I received $10. Oct. 4th, 1876, I received $200; on my note en-
49 dorsed by C. H. Burgess, less $10. Nov. 13th, 1876, I received of him $15. On the 16th I received $50. On the 18th, $150. *On the 18th*, $150. On the 22nd Nov., 1876, $75 for Hodges. On the 23rd Nov., $10. On the 25th Nov., $30; and on the same day $50. Dec. 1st,

1876, $10; and on same day $20. Dec. 4th, 1876, $55. Dec. 6th, 1876' $15; Dec. 7th, 1876, $10; Dec. 8th, 1876, received on my note at 30 days, endorsed by H. H. Tallmadge, for $400. Dec. 13th, 1876, I received of Campbell, per H. H. Tallmadge, $242. Dec. 14th, I received $20. On 16th, $300 per Tallmadge; also $50 on same day. On 23rd Dec., $25. On 27th Dec., 1876, $100. On 28th Dec., $10. On 30th, received $90 on Augheton's note, endorsed by me, at 30 days. The note was for $100. Jan. 6th, 1877, $20. Jan. 10th, 1877, $6. Jan. 13th, $15. Jan. 24th, 1877, $12. Feb. 10th, $250. Feb. 16th, $15. Feb. 22nd, $20. March 3rd, $20. March 14th, $10. May 8th, 1877, $1,558, paid to Bill Davis.

That is about the conclusion of my receiving the money; now, there is another side of it.

(Answer excepted to as containing irrelevant matter.)

Adjourned till to-morrow at 10 a. m.

J. J. JOHNSON, *Ex'r.*

50 Met pursuant to above. Present, counsel on both sides, when the examination-in-chief was resumed as follows:

Q. Do these books contain any other entries save those containing your dealings with Mr. Campbell?

A. Yes; they contain transactions with other people. They are a sort of general memorandum book, a diary.

Q. Have you a transcript of your account with Campbell as detailed in your testimony?

A. I have. I now produce it. I have compared it with my books, and it is correct, so far as I know.

(The same is herewith filed as an exhibit, and marked A. Mr. Edmonston objects to the filing of the exhibit.)

51 EXHIBIT A.

Peter Campbell in account with George Burgess.

Cr.				Dr.		
1876, April	6	$210		1876, April	6	$10
" "	15	1,200	V. 1	" "	15	60
" "	22	1,300	V. 2	" "	22	65
" "	29	300	V. 3	" "	29	9
" May	6	500	V. 4	" May	6	25
" "	8	500	V. 4	" "	8	25
" "	17	300	V. 5	" "	17	45
" "	20	300	V. 6	" "	20	45
" "	27	2,000	V. 7	" "	27	300
		0,000 00		" "	"	3,000
" "	"	500	V. 7	" "	"	75
" June	1	500	V. 7	" June	1	75
" "	9	200	V. 8			000 00
" "	10	800	V. 8	" "	10	150
" "	14	500	V. 8	" "	14	75
" "	24	900	V. 9	" "	24	50
		0,000 00		" July	5	1,130
" July	8	2,158 50	V. 10	" "	8	3,000
" "	15	300	V. 12			000
" "	18	155	V. 12			000
" "	22	1,000	V. 12			000
" "	24	* 275	V. 12			000
" August	19	600	V. 13	" August	19	60
" "	21	100	V. 13			000
" "	24	805	V. 14	" "	24	105
" September	1	500		" September	1	75
Carried forward		15,903 50		Carried forward		8,379
		.2.2				.7.5

1.

WM. F. MATTINGLY,
Attorney & Counsellor at Law, No. 435 Seventh st., bet. D & E. NW., Washington, D. C.

52

EXHIBIT A.

Peter Campbell in account with George Burgess.

CR.			DR.				
1876, September	16	$700	V. 15	1876, September	16		$35
" "	26	110	—	" "	26		5
" "	30	10	—				000
" October	4	200	—	" October	4		10
		000	—	" "	"		10
		000	—	" "	23		6 41
		000	—	" "	28		1
		000	—	" November	1		2 53
		000	—	" "	4		2
" November	13	15	V. —				000
" "	16	50	V. —				000
" "	18	150	V. —				000
" "	22	75	V. —				000
" "	23	10	V. —				000
" "	25	30	V. —				000 00
" "	"	50	V. —	[16.			000 00
" December	1	10	V. —				000
" "	"	20	V. —				000
" "	4	55	V. —				000
" "	6	15	V. —				000
" "	7	10	V. —				000
" "	8	400	—	" December	8		4, 000
" "	13	242	—	" "	13		4, 000
" "	14	20	—				000
" "	16	300	—	" "	15		2, 500
" "	16	50	—	" "	16		600
" "	23	25	—				000
" "	27	110		" "	27		10
Carried forward		$2, 657	—	Carried forward			$11, 181 94
		. 5. 2					. 3. 2

2.

WM. F. MATTINGLY,
Attorney & Counsellor at Law, No. 435 Seventh st., bet. D & E. NW., Washington, D. C.

53

EXHIBIT A.

Peter Campbell in account with George Burgess.

CR.			DR.				
1876, December	30	$100	—	1876, December	30		$10
1877, January	6	20	—				000
" "	10	6	—				000
" "	13	15	—				000
		000	—	1877, January	1		1, 000
" "	24	12	—				0, 000
" February	10	250	—				000
				" February	10		12
" "	16	15	—				000
		000	—	" "	16		15
" "	22	20	—				000
		000	—	" "	22		20
" March	3	20	—				000
		000	—	" March	3		20
" "	14	10	—				000
			—	" March	14		12 65
		000		" April	10		2, 000
" May	8	1, 558	V. 10	1877, May	8		2, 500
		000	—	" August	7		1, 750
Brought forward	$1	15, 903 50		Brought forward	$1		8, 379
" "	$2	2, 657	—	" "	$2		11, 181 94
		$20. 586 50					$26, 900 59
Amount overpaid by Burgess		6, 314 09					
		$26, 900 59					$26, 900 59

3.

WM. F. MATTINGLY,
Attorney & Counsellor at Law, No. 435 Seventh st., bet. D & E. NW., Washington, D. C.

54 Q. At the time the lots in square 240, which you improved, were conveyed to your wife by the Cammacks, was your wife possessed of a separate estate?

(Objected to as irrelevant.)

A. I can't say that she was. At the time the first lots were conveyed she was not.

Q. It appears on the 25th Oct., 1876, your wife and yourself conveyed lot 84, in square 240, to Mr. Campbell. Under what circumstances and what was the real consideration for that conveyance?

A. I do not know what the consideration was.

Q. Was not the transaction similar to the transfer of lot 75 in said square to Campbell?

(Objected to for the reason that he has just stated that he did not know what the consideration was, and because the question is leading in form.)

A. The lot was deeded to him for the purpose that he might raise money. I had the house deeded to Mr. Campbell in order that he might put a loan upon it, which he did.

55 Q. At the time you caused this lot to be so transferred was there any incumbrance on it; if so, much?

A. There was. I don't remember, but I think in the neighborhood of $3,000. There might have been paper representing $4,000.

Q. Was the money that Mr. Campbell was to raise upon lot 84 for your benefit?

(Objected to.)

A. I so understood it. Pretty much all, I understood, was to be for my benefit.

Q. Do you know how much money he succeeded in raising upon the lot?

A. I think he succeeded in raising $2,500. My recollection is that out of the loan he made he paid off $850 that I owed.

Q. What did he do with the rest?

A. I don't know what he did with the rest. I don't know whether I got any of it or not. Of course, he held the next paper.

Q. Was the $850 you say he paid off for you secured upon this lot?

A. It was by a first deed of trust.

Q. Was there any other money secured upon this property?

A. I say he held other paper secured by a second deed of trust.

Q. It appears on the 10th of February, 1877, you and your
56 wife executed a deed of trust on lot 54 in square 240 to Slater. For what purpose was that trust executed?

A. For the purpose of raising money. I made 4 notes of $1,000.

Q. With whom did you hypothecate these notes?

A. With Peter Campbell.

Q. How much money, if you recollect, did you receive from Campbell on the security of these notes?

A. I don't know the amount yet. I can't answer the question at present.

Q. In relation to lots 54 & 84, what arrangement, if any, was there between you and Mr. Campbell as to a reconveyance to you of those lots, or either of them?

(Objected to, unless it appears that the arrangement was in writing and signed by Mr. Campbell.)

A. As to 54, he held a trust on. I don't know that any arrangement was necessary in which he held a trust. As to 84, there was very little said. He gave me to understand that if I deeded the property to him he could raise money on it.

Q. Then these conveyances of lots 75 & 84 were by way of security for such advances as Mr. Campbell might make to you in
57 aiding you in your building operations?

(Objected to as leading, irrelevant.)

A. My answer is that they were deeded to Mr. Campbell that he might raise money on them, which he did, by executing deeds of trust on them.

Q. For whose benefit did you understand the money that Mr. Campbell might raise on these lots for?

A. I understood that it was for my benefit principally.

Q. Did you understand that anybody else other than yourself and Mr. Campbell were to be benefited by that transaction?

A. I expected to get all the money except what Mr. Campbell kept.

Q. Was there not an arrangement or understanding between Mr. Campbell and yourself respecting the transfer of said lots 75 & 84 to the effect that when he had been re-embursed for all moneys which he had advanced to you in the course of your dealings said lots were to be reconveyed to you or to some other person in trust for you?

(Objected to as irrelevant, as being leading in form, and because
58 it has reference to an oral understanding, if any such exist; and witness says none such exists.)

A. I so understand it.

Q. Has Mr. Campbell been reimbursed for the moneys you have said he advanced you in the course of your dealings with him?

(Objected to.)

A. That can only be answered upon a statement of the account.

Q. I am asking you your opinion about it. I want to know if you think you have paid him or that he has been paid.

A. I can't say what amount he has had. There is no use volunte'ring about it, when you can look at the account. The account speaks for itself.

Q. Have you not looked over your accounts with him?

A. I say that I had, but I want to look over them further. Mr. Campbell and I have not looked over our accounts together for a long time, but I have looked over my book.

Q. Did I not understand you to say that you went over your accounts in September last?

A. No, sir.

59 Q. Any time last year?

A. About 1st Sept., 1876, we looked over our accounts.

Q. Well, how did you understand it then?

A. I understood, with the money I had received, and the commissions and interest allowed, that I was indebted to him about $14,650; he held collaterals for much larger sums. I had given him collaterals for much larger sums.

Q. Since that time how much money has he received from you on account of your indebtedness by sale of collaterals or otherwise?

A. I can't answer that question just now.

Q. Are we to understand that when you borrowed money of Mr. Campbell, you deposited collateral notes, secured by deeds of trust upon various lots for a greater amount, and that such collateral notes bore interest at the rate 10 % per annum, and that the money you actually received from him was represented by your individual note at a shorter time for a like rate of interest upon its face, but for a greater amount than he actually gave you, and that he collected interest at the rate of 10 % per annum on both notes?

60 (Objected to.)

A. Well, I don't think I generally gave my individual notes. I may have done it in some instances. I generally received the money on account of the collaterals or deed-of-trust notes. There was a few notes that were not secured, of mine or other parties, except that he held the collateral or deed-of-trust notes. I put into his hands some individual notes not secured by a deed of trust and some notes secured by a deed of trust. I have not had any settlement with him since September, 1876, and I don't know what he has charged. I don't remember whether he collected the interest on both notes as mentioned in the question.

Q. Was there any agreement or understanding with you and Mr. Campbell in the first instance as to the terms on which he should advance you the moneys you have spoken of. If so, what was it?

(Objected to.)

A. Well, I understood that he generally charged me five per

61 cent. per month. A few instances more. I understood it he generally charged me five per cent. a month.

(Answer excepted to.)

Question withdrawn.

Q. Did your notes he held as collaterals and otherwise bear interest at the rate of ten per cent. per annum?

A. Generally they did. And I think in some instances he charged me 10 % per annum over and above the $5 % per month for the use of the money.

(Latter part of the answer excepted to as not responsive to the question.)

Q. Have you ever turned over any materials to Mr. Campbell to be used in finishing these houses?

A. Yes, sir; doors, sash, blinds, and hardware. I think I did this in the spring of 1877. It was about $900 or $1,000, as near as I can get at it. The material was pretty much enough to finish out the three houses. These were used in the completion of the three houses on the lots mentioned in the bill. This material was turned over for that purpose.

62 Q. Has Mr. Campbell collected any money from the District of Columbia for your account which he has not turned over to you?

(Objected to.)

A. I think he collected a small drawback, amounting to about $22. I think I borrowed some money from Ceas, and told him when Campbell came home I would get it. I went up there, and did not get it.

Q. Now, in respect to Exhibit A, does it show both sides of your account with Campbell; the debtor and credit?

A. I think it does.

Q. Look over that paper, and tell me whether you have any reason to believe that it does not correctly show the moneys you received from Mr.

Campbell, the dates when you received the same, also the moneys which Mr. Campbell has received back from you, or through other persons for your account, with the dates when he received the same?

(Objected, for the reason, among others, that the witness has already stated that he could not tell the amount paid to Campbell; that he wished to revise his statement before testifying.)

63 A. Well, I think I am entitled to some credits not on this paper, and I want time to revise it. The column marked Dr. in Exhibit A represents the credits I am entitled to, and the column marked Cr. represents the credits Mr. Campbell is entitled to. There may be some credits that should go on this bill.

Q. In other words, the column of this paper marked Cr. shows the several sums of money you received from Mr. Campbell, with the date of such receipt, and the column marked Dr. shows the several sums of money, with the date thereof, that Mr. Campbell has received back from you, together with the moneys which he ought to have but did not advance to you subject to several items of re-embursement, which you think is not on this paper?

(Objected to.)

A. So far as I know, it does.

Q. In whose handwriting is Exhibit A?

A. In the handwriting of D. O. Callaghan.

Q. In what business is Mr. Callaghan engaged?

A. He is a lawyer. He is a member of the bar.

64 Q. From what sources did he make that account?

A. From the information he received from me and the examination of my books. This exhibit was made some time last fall. I submitted to him the same books I have submitted here. He and I went over these accounts together afterwards, and this exhibit is the result, so far as it goes.

Q. Point out, if you please, the sums of money, as shown upon this paper, which Mr. Campbell ought to have advanced to you, but which he did not advance to you?

A. On April	6,	1876,	$10 was retained out of the sum of		$210 00
" "	15,	"	$60 " " " " " " " "		$1,200 00
" "	22,	"	$65 " " " " " " " "		$1,300 00
" "	29,	"	$9 kept out of.....		$300 00
" May	6,	"	$25 " " "		$500 00
" "	8,	"	$25 " " "		$500 00
" "	17,	"	$45 " " "		$300 00
" "	20,	"	$45 " " "		$300 00
" "	27,	"	$300 " " "		$2,000 00
" "	"	"	$75 " " "		$500 00
" June	1,	"	$75 " " "		$500 00
" "	10,	"	$150 " " "		$800 00
" "	14,	"	$75 " " "		$500 00
" "	24,	"	$50 " " "		$900 00

65

On Aug.	19,	1876,	$60 kept out of.....		$600 00
" "	24,	"	$105 " " "		$805 00
" Sept.	1,	"	$75 " " "		$500 00
" "	16,	"	$35 " " "		$700 00

"	"	26,	"	$5	"	"	" $110 00
"	Oct.	4,	"	$10	"	"	" $200 00
"	Dec.	27,	"	$10	"	"	" $110 00
"	"	30,	"	$10	"	"	" $110 00

These seem to be pretty much all the moneys retained by him out of the amounts loaned as shown by this exhibit.

Adjourned till the 22nd of Jan. at 10 a. m.

J. J. JOHNSON,
Examiner.

66 Met pursuant to above. Present, counsel on both sides, when the examination-in-chief was resumed as follows:

Q. Since our last sitting have you looked over your books and accounts, memoranda, &c., with a view of testing the accuracy of Exhibit A? If yea, what is the result of that examination?

A. I have, and I am entitled to a credit of about Sept. 14th, 1876, of $1,209, or thereabouts, moneys paid to Mr. Campbell by W. S. Chew or P. A. Darneille on my account, as part of the proceeds of a loan on lot 49, square 623. Then I find $1,050.00 on Jan 11th, 1877, paid by the check of H. H. Tallmadge, Jan. 11th, 1877, which takes the place of the item of Jan. 13th. I find the item of December 8th and 13th, 1876, are made up of moneys paid by H. H. and L. C. Tallmadge to Campbell for me, by their checks, which I now produce. (They are herewith filed and marked Exhibits B, C, D, E, F, G, & H.) The endorsements on the back of the checks are in the handwriting of Peter Campbell.

67 EXHIBIT B.

No. .] WASHINGTON, D. C., *Nov.* 1, 1876.

Citizens' National Bank, pay to Peter Campbell, or order, two hundred dollars.

$200.] H. H. TALLMADGE.

(On left margin:) On ⅔ of $800 note. Campbell.

(Endorsed:) PETER CAMPBELL.

(Stamp:) Citizens' National Bank. Paid Jan. 11, 1877. Washington, D. C.

EXHIBIT C.

No. .] WASHINGTON, D. C., *Jan'y 11th*, 1877.

Citizens' National Bank, pay to Peter Campbell, or order, ten hundred & fifty $\frac{83}{100}$ dollars.

$1,050.83.] H. H. TALLMADGE.

(Endorsed:) PETER CAMPBELL.

(Stamp:) Citizens' Nat'l Bank. Paid Jan. 11, 1877. Washington, D. C.

68 EXHIBIT D.

No. .] WASHINGTON, D. C., *Dec. 11th*, 1876.

Citizens' National Bank, pay to Peter Campbell, or order, fifteen hundred dollars.

$1,500.] TALLMADGE & CO.

(On left margin:) To apply on loan of $4,000, made by Girard Fire Ins. Company.

(Endorsed:) PETER CAMPBELL.

(Stamp:) Citizens' Nat'l Bank. Paid Dec. 11, 1876. Washington, D. C.

EXHIBIT E.

No. .] WASHINGTON, D. C., *Dec.* 12, 1876.

Citizens' National Bank, pay to Peter Campbell, or order, five hundred dollars.

$500.] TALLMADGE & CO.

(Endorsed:) PETER CAMPBELL.

(Stamp:) Citizens' Nat'l Bank. Paid Dec. 14, 1876. Washington, D. C.

EXHIBIT F.

No. .] WASHINGTON, D. C., *Dec. 12th*, 1876.

Citizens' National Bank, pay to Peter Campbell, or order, two thousand dollars.

$2,000.] TALLMADGE & CO.

(Endorsed:) PETER CAMPBELL.

(Stamp:) Citizens' Nat'l Bank. Paid Dec. 13, 1876. Washington, D. C.

69 EXHIBIT G.

No. .] WASHINGTON, D. C., *Dec. 23rd*, 1876.

Citizens' National Bank, pay to Peter Campbell, or order, one thousand dollars.

$1,000.00.] TALLMADGE & CO.

(On left margin:) Good for ($1,000) one thousand dolls. when properly endorsed.

THOS. C. PEARSON, *Teller.*

(Endorsed:) PETER CAMPBELL, GEORGE H. ELLIOT, RIGGS & CO.

(Stamp:) Citizens' Nat'l Bank. Paid Dec. 23, 1876. Washington, D. C.

EXHIBIT H.

No. .] WASHINGTON, D. C., *Decr. 23d*, 1876.

Citizens' National Bank, pay to Peter Campbell, or order, three thousand dollars.

$3,000.] TALLMADGE & CO.

(On left margin:) Good for ($3,000) three thousand doll's when properly endorsed.

THOS. C. PEARSON, *Teller.*

(Endorsed:) PETER CAMPBELL, RIGGS & CO.

(Stamp:) Citizens' Nat'l Bank. Paid. Dec. 23, 1876. Washington, D. C.

Q. What became of the collateral notes you deposited with Campbell?

A. I have got some of them.

Q. Have you any means of knowing the number and description of the collateral notes you put in the hands of Campbell?

70 A. I can recollect good many of the lots upon which notes were secured.

Q. Will you endeavor to find out by our next meeting the number and descriptions of your notes thus placed in his hands?

A. Yes.

Q. Are you able to-day to give me the sums of money which Mr. Campbell has received from you or through other persons for you, or on account of loans made for you?

A. I can give a great many of the sums:

May 27, 1876, he got $3,000.

July 8, " " " $3,000, through J. Stanley Jones, less $58 paid to Jones for fixing up the papers.

July 5, I paid him $1,130.

Sept. 14, $1,209.39, which was omitted from Exhibit A. Dec. 8 & 13, are explained by the checks filed. Dec. 15, he got back, I think, $2,500 on lot 84. Dec. 16, $600 by an order on Maj. Elliot.

Jan. 11, 1877, $1,050.53.

April 10, " $2,000 per J. B. Sawyer, proceeds of loans on lot 76.

May 8, $2,500 per J. & E. Cammack, loan on lot 81.

Aug. 7, he sold out lot 54 sq. 240 & purchased it himself through Wm. Slater, trustee, for $1,750.

Adjourned till Thursday next at 11 a. m.

J. J. JOHNSON, *Examiner.*

71 Met pursuant to above. Present counsel on both sides when the examination-in-chief was resumed as follows:

Q. Have you found any of the notes? If so produce them?

A. I have found some of them and I here produce them. (They are herewith filed, and marked Exhibits J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, A 1, A 2, A 3, A 4, A 5, A 6, A 7, A 8, A 9, A 10, A 11, A 12, A 13, A 14, A 15, A 16, A 17.)

EXHIBIT J.

$1,200.] WASHINGTON, D. C., *April 15th*, 1876.

Thirty days after date I promise to pay to the order of myself twelve hundred dollars at the Second National Bank. Value received, with interest at ten per cent. per annum.

No. .] Due. .

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lot 68 and 69 sq. 240.

(Across the face:) Cancelled. Bank.

[Erased: (Endorsed:) GEORGE BURGESS.]

72 EXHIBIT K.

$1,300.] WASHINGTON, D. C., *April* 17, 1876.

Thirty days after date I promise to pay to the order of myself the sum of thirteen hundred dollars for value received, with interest at the rate of ten per cent. per annum, payable at the Second National Bank.

No. .] Due May 20.

GEORGE } Torn out. { ESS. / 169.

With note as collateral of $3,000 in square

(On left margin:) Secured by deed of trust.

(Endorsed:) GEORGE BURGESS.

EXHIBIT L.

$3,000.] WASHINGTON, D. C., *April* 17*th*, 1876.

Four months after date I promise to pay to the order of myself three thousand dollars at the Second National Bank. Value received, with interest at ten per cent. per annum.

No. .] Due .

GEOR [Torn out.] BURGESS.

(On left margin:) Secured by deed of trust on square 240, lots, 68 & 69.

(Endorsed:) GEORGE BURGESS.

73 EXHIBIT M.

$300.] WASHINGTON, D. C., *April* 29, 1876.

Eighteen days after date I promise to pay to the order of myself the sum of three hundred dollars for value received, with interest at the rate of ten per cent. per annum. Payable at .

No. .] Due .

GEOR } Torn out. { BURGESS. / 240.

With note as collateral, $3,000, lots 69,

(On left margin:) Secured by deed of trust.

(Endorsed:) GEORGE BURGESS.

EXHIBIT N.

$1,200.] WASHINGTON, D. C., *April* 28*th*, 1876.

Thirty days after date I promise to pay to the order of myself twelve hundred dollars, at the National Bank of the Republic. Value received. Int. at ten per cent.

No. .] Due .

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lot' 70, 71, & 72, sq. 240.

(Endorsed:) [Erased: GEORGE BURGESS, C. H. BURGESS.]

74 EXHIBIT O.

$500.] WASHINGTON, D. C., *May* 2, 1876.

Thirty days after date I promise to pay to the order of myself the sum of five hundred dollars, for value received, with interest at the rate of ten per cent. per annum. Payable at 2nd National Bank. Collateral note of 3,500 dollars, secured by deed of trust on lots 70, 71, & 72, sq. 240.

[Erased: GEORGE BURGESS.]

(Endorsed:) GEORGE BURGESS.

(Across the face:) Paid.

EXHIBIT P.

$500.] WASHINGTON, D. C., *May* 2*d*, 1876.

Thirty days after date I promise to pay to the order of myself the sum of five hundred dollars. Payable at 2d National Bank. Collateral note for 3,500 dollars, secured by deed of trust on lots 70, 71, & 72, sqr. 240.

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lots 70, 71, & 72, sqr. 240.

(Endorsed:) GEORGE BURGESS.

75 EXHIBIT Q.

$3,500.] WASHINGTON, D. C., *May* 2*d*, 1876.

Thirty days after date I promise to pay to the order of myself three thousand five hundred dollars, at the Second National Bank. Value received. Interest at ten per cent. per annum till paid.

No. .] Due .

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust, sublots No. 70, 71, & 72, sq. 240.

(Endorsed:) GEORGE BURGESS.

EXHIBIT R.

$500.] WASHINGTON, D. C., *May* 16, 1876.

Ninety days after date I promise to pay to the order of myself five hundred dollars, at the Second National Bank. Value received, with interest at 10 per cent. per annum until paid.

No. .] Due .

[Erased: GEORGE BURGESS.]

(Written across the face:) Paid.

(On left margin:) Secured by deed of trust.

(Endorsed:) GEORGE BURGESS.

76 EXHIBIT S.

$1,000.] WASHINGTON, D. C., *May 16th*, 1876.

Ninety days after date I promise to pay to the order of myself one thousand dollars, at the Second National Bank. Value received. Int. at ten per cent. per annum until paid.

No. .] Due .

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lot 69, sq. 240.

(Endorsed:) GEORGE BURGESS.

EXHIBIT T.

$3,000.] WASHINGTON, D. C., *May 16th*, 1876.

Ninety days after date I promise to pay to the order of myself three thousand dollars, at the Second National Bank. Value received. Int. at ten per cent. per annum until paid.

No. .] Due .

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lot 69, sq. 240.

(Endorsed:) [Erased: GEORGE BURGESS.]

77 EXHIBIT U.

$2,000.] WASHINGTON, D. C., *May 19th*, 1876.

Four months after date I promise to pay to the order of myself two thousand dollars, at the National Bank of the Republic. Value received, at ten per cent. per annum till paid.

No. .] Due .

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lot 70, sq. 240.

(Endorsed:) [Erased: GEORGE BURGESS.]

EXHIBIT V.

$2,000+.] WASHINGTON, D. C., *May 19th*, 1876.

Four months after date I promise to pay to the order of myself two thousand dollars, at the National Bank of the Republic. Value received, with interest at ten per cent. per annum till paid.

No. .] Due . Paid.

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lot 70, sq. 240.

[Erased: GEORGE BURGESS.]

78 EXHIBIT W.

$1,000.] WASHINGTON, D. C., *May 27th*, 1876.

Three months after date I promised to pay to the order of myself one

thousand dollars, at the Second National Bank. Value received. Int. at ten per cent. per annum till paid.
No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by 1. Secured by first deed of trust on sub. lot 75, sq. 240, duly stamped.

(Endorsed:) GEORGE BURGESS.

EXHIBIT X.

$1,000+.] WASHINGTON, D. C., *May* 27*th*, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars, at the Second National Bank. Value received. Interest at ten per cent. per annum till paid.
No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by first deed of trust on sub. lot 75, sq. 240, duly stamped.

(Endorsed:) GEORGE BURGESS.

79 EXHIBIT Y.

$1,000.] WASHINGTON, D. C., *May* 27, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars, at the Second National Bank. Value received. Int. at ten per cent. per annum till paid.
No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by first deed of trust on lot 75, sq. 240, duly stamped.

(Endorsed:) GEORGE BURGESS.

EXHIBIT Z.

$1,000.] WASHINGTON, D. C., *May* 27, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars, at the Second National Bank. Value received. Int. at ten per cent. per annum till paid.
No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by deed of trust, duly stamped. Secured by deed of trust on lot 75, sq. 240.

(Endorsed:) GEORGE BURGESS.

80 EXHIBIT A 1.

$1,000.] WASHINGTON, D. C., *June* 10*th*, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars, at 2d National Bank, Washington, D. C. Value re-

ceived, with interest at 10 per cent. per annum until paid. Note of $2,500 secured by deed of trust on lot 76, sq'r' 240, as coll'l.
No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by deed of trust as coll.

(Endorsed:) GEORGE BURGESS.

EXHIBIT A 2.

$2,500.] WASHINGTON, D. C., *May 22d*, 1876.

Four months after date I promise to pay to the order of myself twenty-five hundred dollars, payable at the National Bank of the Republic. Value received, with interest at ten per cent. per annum until paid.
No. .] Due .]

GEORGE BURGESS, 321 4½ st.

(On left margin:) Secured by deed of trust on lot 76, sq'r' 240.

(Endorsed:) GEORGE BURGESS.

81 EXHIBIT A 3.

$900.] WASHINGTON, D. C., *June 24th*, 1876.

Thirty days after date I promise to pay to Peter Campbell, or order, nine hundred dollars, with interest at the rate of ten per cent. per annum until paid, at the office of Riggs & Co., Washington, D. C., for value received. Collateral, real estate note of 1,200 doll's on lots 81 & 82, sq'r' 240.

[Erased: GEO. BURGESS.]

EXHIBIT A 4.

$1,200.] WASHINGTON, D. C., *June 24th*, 1876.

Thirty days after date I promise to pay to the order of myself twelve hundred dollars, at Riggs & Co.'s bank. Value received. Int. at 10 per cent. per annum until paid.
No. .] Due .

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lots 81 & 82, sq. 240.

(Endorsed:) GEORGE BURGESS.

82 EXHIBIT A 5.

$1,500.] WASHINGTON, D. C., *July 5th*, 1876.

Three months after date I promise to pay to the order of J. M. McGrew fifteen hundred dollars, at the National Bank of the Republic. Value received, with interest at ten per cent. per annum.
No. .] Due. .

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust on lot 81, sq. 240.

(Across the face:) Paid.

(Endorsed on back.)

(Erased:) Interest paid to maturity. J. M. McGREW.

(Stamp:) Nat'l Metropolitan Bank. [Erased: Oct. 7, 1876.

[Erased: C. H. BURGESS, TALLMADGE & Co. For collection. J. M. McGREW.]

83 UNITED STATES OF AMERICA,
District of Columbia, to wit:

Be it know' that on the seventh day of October, in the year eighteen hundred and seventy-six, I, William G. Moore, notary public, residing in the said district, duly commissioned and sworn, at the request of the National Metropolitan Bank of Washington, presented the original note of George Burgess, hereto attached, at the National Bank of the Republic, and demanded payment thereof, whereunto I was answered by the paying teller, "It is not good."

Therefore I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly protest, against the drawer and endorsers of the said note, and all others whom it may or doth concern, for all costs, exchange, charges, damages, and interest suffered and to be suffered for want of payment thereof. And on the same day I addressed notice of protest to each endorser, and on Monday, the 9th day of October, 1876, delivered notice for C. H. Burgess, at his place of business, Eighth and O streets, northwest.

84 Notice for Tallmadge & Co., at their office, 928 F street, northwest.

And mailed notice for J. M. McGrew, 7th day of October, 1876, directed to "J. M. McGrew, esq., Sixth Auditor, P. O. Dept., Washington, D. C."

In testimony whereof I have hereunto set my hand and affixed my notarial seal of office the day and year aforesaid.

WM. G. MOORE,
Notary Public.

Protesting, $1.75; notices, .30; postage, .02—2.07.

Recorded, book E, page 146.

EXHIBIT A 6.

$2,500.] WASHINGTON, D. C., *July 6th*, 1876.

Three months after date I promise to pay to the order of myself, twenty-five hundred dollars, at Riggs & Co.'s Bank. Value received. Interest at ten per cent. per annum until paid.

No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by deed of trust on lot 81, sq. 240.

85 EXHIBIT A 7.

$1,000.] WASHINGTON, D. C., *July 22nd*, 1876.

Three months after date I promise to pay to the order of myself one

thousand dollars, payable at Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

GEORGE BURGESS.

(On left margin:) Secured by deed of trust on lot 84, sq. 240.

(Across the face:) Cancelled.

(Endorsed:) GEORGE BURGESS.

EXHIBIT A 8.

$1,000.] WASHINGTON, D. C., *July* 22*nd*, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars, payable a' Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

GEORGE BURGESS.

(On left margin:) Secured by deed of trust on lot 84, sq. 240.

(Across the face:) Cancelled.

(Endorsed:) GEORGE BURGESS.

EXHIBIT A 9.

$1,000.] WASHINGTON, D. C., *July* 22*nd*, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars, payable at Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

GEORGE BURGESS.

(On left margin:) Secured by deed of trust on lot 84, sq. 240.

(Across the face:) Cancelled.

Endorsed:) GEORGE BURGESS.

86 EXHIBIT A 10.

$1,000.] WASHINGTON, D. C., *July* 22*nd*, 1876.

Three months after date I promised to pay to the order of myself one thousand dollars, payable at Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by deed of trust on lot 84, sq. 240.

(Across the face:) Cancelled.

(Endorsed:) GEORGE BURGESS.

EXHIBIT A 11.

$1,000.] WASHINGTON, D. C., *August* 17, 1876.

Two months after date I promise to pay to the order of myself one

thousand dollars at Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

No. .] Due . Paid.

[Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust [erased: on lot 49, square 623.]

(Endorsed:) [Erased: GEORGE BURGESS.]

87 EXHIBIT A 12.

$1,000.] WASHINGTON, D. C., *May 13th*, 1876.

Sixty days after date I promise to pay to the order of myself one thousand dollars, at the National Bank of the Republic. Value received, with interest at ten per cent. per annum.

No. . Due July 15.

[Erased: GEORGE BURGESS.]

Endorsed on back:) [Erased: GEORGE BURGESS.]

(On left margin:) Secured by deed of trust.

I hereby waive demand' notice, & protest, & hold myself responsible.

[Erased: GEO. BURGESS.]

JULY 15, 1876.

(Stamp:) German-American Savings Bank. July 15, 1876.

88 EXHIBIT A 13.

$700.] WASHINGTON, D. C., *Oct. 19th*, 1876.

Ten days after date I promise to pay to the order of H. H. Tallmadge seven hundred dollars, payable at . Value received, with interest at ten per cent. per annum until paid.

No. .] Due Nov. 1.

GEORGE BURGESS.

(Endorsed on back:) [Erased: H. H. Tallmadge, Tallmadge & Co.]

EXHIBIT A 14.

$1,000.] WASHINGTON, D. C., *Dec. 8th*, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars at Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by deed of trust on sublots 53 & 54, sq. 240.

(Written across the face:) Cancelled.

(Endorsed:) GEORGE BURGESS.

89 EXHIBIT A 15.

$1,000.] WASHINGTON, D. C., *Dec. 8th*, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars at Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

GEORGE BURGESS.

(On left margin:) Secured by deed of trust on sublots 53 & 54, sq. 240.

(Across the face:) Cancelled.

(Endorsed:) GEORGE BURGESS.

EXHIBIT A 16.

$1,000.] WASHINGTON, D. C., *Dec. 8th*, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars at Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

No .] Due .

GEORGE BURGESS.

(Endorsed:) GEORGE BURGESS.

(On left margin:) Secured by deed of trust on sublots 53 & 54, sq. 240.

(Across the face:) Cancelled.

90 EXHIBIT A 17.

$1,000.] WASHINGTON, D. C., *Dec. 8th*, 1876.

Three months after date I promise to pay to the order of myself one thousand dollars at Riggs & Co.'s Bank. Value received, with interest at ten per cent. per annum until paid.

No. .] Due .

GEORGE BURGESS.

(On left margin:) Secured by deed of trust on sublots 53 & 54, sq. 240.

(Across the face:) Cancelled.

(Endorsed:) GEORGE BURGESS.

91 Q. For what sum were the promissory notes described in the deed of trust from yourself and wife of Feb. 10th, 1877, to Slater?

A. I think 4 notes of $1,000 each. The first deed of trust on lot 54, square 240.

Q. What did you do with those notes?

A. I put those 4 notes into the hands of Mr. Campbell, to be held by him as collateral securities for moneys advanced to me and to be advanced. I don't think he advanced me over $600 or $1,000. The papers will show. He was to advance me $2,500 when the house was under roof.

I might state further that notwithstanding he held those notes as collateral securities, he suffered the property to be sold out under those notes, and bought it in himself through the trustee, who was his clerk, for a great deal less than its value.

I think Campbell is entitled to a credit of $200, which does not appear on Exhibit A.

Adjourned till Monday next at 1 p. m.

J. J. JOHNSTON,
Examiner in Chancery.

92 Met pursuant to adjournment.

Present, counsel on both sides, when the examination-in-chief was resumed as follows:

Q. Are we to understand that you repudiate the agreement between yourself and Campbell as to usury and desire that your creditors shall have the benefit of the moneys retained by him on that account?

A. I do repudiate it, and desire that they shall, for the reason Peter did not keep his part of the agreements with me.

(Counsel for defendant Campbell enters now a general objection to all questions relating to the state of account between the defendant Geogre Burgess from the defendant Campbell, for the reason that all such questions are irrelevant and immaterial to the issues made by the pleadings. The objections being made at the time the questions were propounded.)

Cross-examination by Mr. EDMONSTON:

Q. What was the condition of house on lot 75 at the time it was deeded by the defendant Doe to the defendant Campbell, as to being finished or unfinished?

93 A. My recollection is it was not completed at that time.

Q. How far had it been completed? What work had been done on the house?

A. I don't remember, but I think I pretty much completed the house afterwards.

Q. Was it plastered when deed was made?

A. I don't know whether it was or not, but of course I had it plastered, either before or after it was deeded to him.

Q. Did Mr. Campbell expend any money upon that house after it was deeded to him?

A. I think he had a back porch put on, which was not according to the plans; only a few of the other houses had them.

Q. Is that all he did?

A. There may be some little items I don't recollect, but I furnished most of the stuff to complete the house. I did most everything to finishing out that particular house.

Q. What was the condition of house on lot 84 at the time it was deeded to Campbell?

A. I think that was only sheathed in. No floors. It was ready for tinning.

Q. Do you know to what amount lot 84 was incumbered when it was deeded to Campbell?

94 A. I think it had a first deed of trust for $850 and a second trust held by Mr. Campbell.

Q. Who held the first trust?

A. I think Billy Davis, as agent, and after it was deeded to Campbell he took it up.

Q. What was the condition of house on lot 54 at the time of the deed of trust to Slater mentioned in the bill?

A. I think the house was roofed in at the time.

Q. The house was not plastered or floored?

A. No.

Q. Were you present at the sale?

A. Yes.

Q. Did you make any objection to the proceedings of the sale?

A. I don't remember that I did. Mr. Campbell was not there for me to make any objections to.

Q. Do you remember who was there besides yourself?

A. The trustee, the auctioneer, I think, Mr. Caldwell, and I believe Mr. Simpson, and perhaps one or two others, were all.

Q. Was either Hewett or Ceas there?

A. I think not.

95 Q. Did you make any efforts to secure a purchaser?

A. I don't think I did. [In the first place, I don't think he had any right to sell, for the reason that the deeds of trust paper were only held as collateral for moneys advanced and to be advanced. I did not consider him the owner of the deed of trust paper.]

(All enclosed excepted to as not responsive to the question.)

Q. Do you know who finished house on lot 54?

A. Mr. Campbell had it finished, I believe. I furnished some of the material for it.

Q. At whose expense was the house finished on lot 84?

A. After it was deeded to him, I think the most of it was done at his expense.

Q. When did you first pay to defendant Campbell any money, and for what purpose and in what way was it paid?

A. The first money was for the payment a note given by my brother about the 6th of April.

Q. How was the $3,000 paid May 27th, 1876.

96 A. On that day I gave Campbell first deed of trust to secure 4 notes for $1,000 each on lot 75, square 240, on which Mr. Riggs, I think, let him have the $3,000. That of July 8 was through J. Stanley Jones.

Q. Were those notes your notes that Campbell got the money from Riggs on?

A. I think they were.

Q. Did Campbell get the money from Riggs for your benefit?

A. I don't know what he told Riggs, but I understand he could get $3,000 @ 8 % from Riggs on my paper.

Q. Please look at this check, 19 May, 1876, and state whether not you received on it the money called for by the check.

A. I presume that check is correct. I suppose I must have got the money on the check. I endorsed it and Tallmadge endorsed it.

(The same is herewith filed and marked Defendant's Exhibit P. C. 1.)

EXHIBIT P. C. 1.

$1,210.] WASHINGTON, D. C., *May* 19, 1876.

Citizens' National Bank of Washington City, pay to Geo. Burgess, or bearer, twelve hundred and ten dollars.

No. 752.]

PETER CAMPBELL.

(Endorsed:) GEO. BURGESS.
TALLMADGE & CO.

(Stamp:) Citizens' Nat'l Bank of Washington, D. C. Paid, May 19, 1876.

97 Q. Look at paper now shown you, and the order on the back, and state if it is signed by you?

A. Yes; that should have been Jan'y, 1877, instead of 1876.

(The same is herewith filed and marked Exhibit P. C. 2.)

EXHIBIT P. C. 2.

WASHINGTON, D. C., *Jan. 15th*, 1877.

Mr. Campbell to William O'Donnell, Dr.

[Dealer in tin, copper, and sheet-iron ware, No. 1211 Seventh street, between M & N sts.]

Covering 3 houses, 2,694 ft. 8 cts. ft	$215 52
124 ft. guttering spouting, 15 cts	18 60
6 elbows, 15 cts. each	90
	$235 02

Received payment.

WM. O'DONNELL.

(On left margin:) Mr. Campbell will please pay the within bill & charge to % of yours truly,

GEO. BURGESS.

JAN., 16*th*, 1876.

Q. When the notes secured on lot 54 were given to Mr. Campbell, and which you say were given only as collateral security, did you give him any note as evidence of your indebtedness to him on account of those collaterals?

98 A. I don't remember; I know one time Tallmadge gave a note for $242, which I endorsed, and which was on account of paper given previous to that. I don't remember whether I gave him any note or not. I simply gave him the collaterals.

Adjourned until the 5th Feb., at 10.30 a. m.

J. J. JOHNSON, *Examiner*.

99 Met pursuant to above. Present, counsel on both sides, where the cross-examination was resumed as follows:

Q. What was the amount of incumbrance on lot 75 at the time it was deeded to Campbell?

A. I don't remember.

Q. Was it $3,000?

A. I think he called it that, commissions and everything.

Q. Was it not more that $3,000?

A. I don't think it was.

Q. Can you tell the amount of it by looking at Exhibit A?

A. I am sure it was $3,000.

Q. Look at the three checks handed you, and state if the money was paid to you on those checks, and if they are included in the amount paid you on Exhibit A.

A. One of those checks I had, dated Sept. 1, 1876, which is Exhibit P. C. 3; P. C. 4 is not endorsed by me, and don't appear; P. C. 5, I think there no doubt this check, and is correct. It don't appear on Exhibit A, but it appears on my memorandum book.

Q. Can you state whether or not you received the money on Exhibit P. C. 4?

100 EXHIBIT P. C. 5.

No. 800.] WASHINGTON, D. C., *Aug. 25th*, 1876.

Citizens' National Bank, pay to Geo. Burgess, or order, fifty dollars.
$50.] PETER CAMPBELL.

(Endorsed:) GEO. BURGESS.,
GEO. AUGHERTON.

(Stamp:) Citizens' Nat'l Bank, Washington, D. C. Paid Aug. 26, 1876.

101 A. I don't think I received that money.

Q. Why do you think so?

A. Because I don't find any memorandum of that amount, and I was in the habit disbursing money as soon as I got it. I don't find any memorandum where I paid out that amount in the next few days; then, again, the check is not endorsed by me.

Q. Should Mr. Campbell swear that he paid you that check and that it came back to him in the due course of business in the settlement of his bank account with Riggs & Co., would you have reason to doubt that you got the money on it?

A. I should still doubt it unless I could find where I disbursed the money.

Q. Might you not have disbursed the money and failed to make a memorandum of it?

A. I was in the habit of making a memorandum of all moneys I disbursed *on* intended so to do.

Q. Was it not your habit also to make a memorandum of all moneys received, and yet did you not omit to make a memorandum of
102 $1,210 at one time, May 19, and of $200 on July, and of the $50 check shown to you this morning?

A. The $210, of May 19, I have explained before, that I closed the memorandum on May 17th, 1876, and opened a new book May 20, 1876, which for three days I kept no memorandum book. I found where I disbursed the $200 on July 1. My memorandum book shows where I disbursed that money. At the time I got the $200 I gave Peter Campbell a receipt for it which I took up.

Q. Is the fact that you find no memorandum of the paying away by you of the amount of money represented by P. C. No. 4 the only reason for believing that you did not receive it?

A. No, sir; I think I have some recollection on the point. I don't recollect that check being paid. I find, a few days after that, I got some money through Mr. Tallmadge.

Q. Have you any other reason for believing you did not receive it?

A. Well, those are pretty much my only reasons.

Q. Did you not get some checks from Mr. Campbell, payable
103 like this to bearer, upon which you got the money without endorsing the checks?

A. I may have done so.

Q. I exhibit to you now for $500 of May 27, 1876, for which you have given Mr. Campbell a credit.

A. I have no doubt I got that.

(The same is filed as Exhibit P. C. 6.)

EXHIBIT P. C. 6.

No. 218.] WASHINGTON, D. C., *May 27th*, 1876.

Riggs & Co., pay to George Burgess, or bearer, five hundred dollars.
$500.] PETER CAMPBELL.

Q. Have you any statement showing the moneys received upon lot 70 from Mr. Campbell?

A. I don't know that I have any separate statement of that. I have a memorandum that about Sept. 1, that he had loaned me about $3,500 on lot 70 to that date.

Q. Do you think that amount includes the $425 check on Riggs & Co. on lot 70?

A. No, sir.

104 Q. Was not Mr. Campbell paid $4,000, December 8, and was not that paid from a loan on lot 70?

A. I think he was paid $4,000 about that time as the proceeds of lot 70. I think lot 70 was in Tom Young's name. It was deeded to him purposely to make a loan on it, about that date.

Q. Had not Mr. Campbell held $4,000 on that lot, it is probable he would have been paid so much on the loan on the lot?

A. If he had held $4,000 on that lot, I think he would have demanded much larger sum. He was in the habit of charging 5 per cent. per month.

Q. Do you remember requesting Mr. Campbell to pay Wm. L. Davis about Dec. 6, 1876, $100 to induce him to release the trust he held on lot 81?

A. No; I don't remember it.

Q. How was the amount of $1,000, of Jan. 1st or 11th, 1877, paid to Campbell?

A. It was paid by check of H. H. Tallmadge for $1,050.83, by Exhibit C.

Q. How was the $4,000, of Dec. 8th, paid?

105 A. A loan was put on it about that time and it was paid by the checks of Tallmadge, which are Exhibits D, E, & F, represent the payment of the $4,000.

Q. How was the $4,000 of December 13th paid?

A. That was paid by Exhibits G & H, two checks of Dec. 25th.

Q. And on what account was that?

A. I don't remember whether it was on lot 70 or 75.

Q. Whose notes were given for the loan on lot 75?

A. I think Peter Campbell gave his notes.

Q. There was a loan about that time on lot 75 from Riggs?

A. There was a loan of about $3,000 about that time which was released, and which is charged to Campbell as a loan from Riggs.

Q. Who paid that $3,000 to Riggs?

A. I presume Campbell did, from this $4,000 loan. I did not pay it personally.

Q. You have not give' Campbell credit for the $3,000 he paid Riggs in Exhibit A?

A. It does not appear on the exhibit. I would be entitled to the house free of incumbrance if I had done that.

Q. Was not this the transaction in regard to lot 75 that Mr.

106 Campbell advanced about $3,000 on that lot before it was deeded to him; after it was deeded to him he received a loan from Riggs of $3,000 with which he paid what he had advanced upon the lot, and that afterwards he obtained a loan upon his own notes of $4,000 upon the same lot with which the loan from Riggs was paid?

A. I think I had received somewhere in the neighborhood of $3,000 at the time the house was deeded to him, and that he got about $3,000 on it from Riggs & Co. After this he let me have $500, less $75 commission. We then called the incumbrance $3,500. He got $4,000 through Tallmadge & Co. on account of it. I think he got $500 more on that house than he was entitled to, or that he had advanced at that time, and that he still held the title to the house.

Q. You did not pay the $3,500 on the house?

A. Tallmadge paid it from the loan.

Q. You mean that Tallmadge paid it from the $4,000 loan to Campbell from the insurance company?

A. Certainly I do. I suppose Campbell paid the incumbrances on the property.

107 Q. Ought not, then, Mr. Campbell to have a credit of $3,500 on Exhibit A, which is not given him on account of the payment of these incumbrances on lot 75?

A. If he give up the house free I suppose he ought to have, but he used the house to get the $4,000 on.

Q. Who paid the first incumbrance on lot 84, between $800 & $900, which was held by Wm. L. Davis?

A. I don't know; he may have paid it.

Q. To whom do you refer to by he?

A. I mean Campbell.

Q. Ought he not to have a credit, then, for that amount which is not given him on Exhibit A?

A. I don't know but that he ought to have credit for it.

(The said check is herewith filed and marked Exhibit P. C. 7.)

EXHIBIT P. C. 7.

No. 346.] WASHINGTON, D. C., *December 14th*, 1876.

Riggs & Co., pay to W. L. Davis, or bearer, eight hundred and eighty-four dollars.

$884.] PETER CAMPBELL.

(Endorsed:) WM. L. DAVIS.

(Stamp:) Nat'l Metropolitan Bank, D. C. Dec. 18, 1876.

108 Q. You state that if Mr. Campbell gave up the house free he ought to have a credit of $3,500. Ought not also have a credit of $3,500, though he does not give up the house?

A. I don't think he ought. The house is worth more money than the $3,500. If I should charge him with the value of the house, the house is worth about $5,500.

Q. His interest in the house is only what is in excess above the incumbrance? Is it not?

A. Well, of record; yes.

Q. And he took it subject to an incumbrance of about $3,500 from you, did he not?

A. In that neighborhood.

Q. Ought, then, he not have a credit on Exhibit A of $3,500 which is not given to him on that exhibit?

A. I don't think he ought, because he got of Riggs about $3,000, and afterwards he got of Tallmadge about $4,000.

Q. Both were on his own notes, and after the property had been deeded to him, was it not?

A. He got it on the strength of the property. They would not
109 credit on his own notes.

Q. He received these on the property $7,000, and, according to your testimony now, paid $6,500, and his the house subject to $4,000?

A. Certainly he has.

Q. And in your Exhibit A he is charged with this $7,000, and has been given credit for only $3,000. Is this not so?

A. He has been given credit for more than that. He has been given credit for $3,500. Campbell has had $7,000 back on the house or thereabouts, and he has let me have on account of the house about $6,500. If he should set that transaction by itself he should let me have back the house and $500.

Q. Who made this account Exhibit A, and when was it made?

A. It was made last summer by Mr. Callaghan.

Q. At whose instance and at whose expense, and whether before the filing of this bill?

A. Partly at the instance of myself. I will state that in the winter or spring of 1877 I called on Mr. Campbell's agent many times, and re-

quested him to settle our accounts. He put me off from time to
110 time with various excuses, and finally told me he would not look over and give me a statement of account. He said he was not going to put himself into a hole. Some time after that I was looking over the accounts and talking with Mr. Ceas about them, and I wanted some one to assist me in getting up the accounts, and I don't remember whether I suggested Mr. Callaghan or Ceas; at all events, Ceas and I went to Callaghan's office and he assisted me in looking over the accounts. I never paid him anything for it, and I don't know whether Ceas did or not. I presume if he has been paid, Ceas paid.

Q. Was the subject of filing a suit of this nature talked of by you and Ceas?

A. It may be.

Q. Have you been intimate with Ceas for some time?

A. About ten years.

Q. Have you had any business transactions together?

A. Quite a number.

Q. Has he loaned you money?

(Objected to as immaterial.)

111 A. He has frequently; not much in the last year or two.

Q. Is Mr. Ceas pretty well acquainted with your business transactions?

A. We used to talk over business matters together. I don't know whether I told him all or not.

Q. Did you receive any money from him during the building of the house on Q street?

A. Very little. I got money of when I was building the year before on the other side.

Q. Were not several of the houses on square 240, similar in plan and structure to that on lot 75, sold at public auction?

(Objected to as immaterial.)

A. There were several of them sold.

Q. Do you remember what prices they brought?

A. I don't remember all of them. They were incomplete.

Q. Was not lot 74 and the house on it sold?

A. I think it was, and brought, I think, $4,000.

Q. Was there more than one bidder?

A. Two I think, Hewett and Cammack. I mean Hewett the
112 petitioner in this case. I think his bid was $3,900. That house was not complete.

Q. Was there not a large attendence at that sale?

A. Quite a large attendance.

Q. Did not the petitioner Hewett decline to bid more than $3,900?

A. I think that is all he did bid. He did not want the property.

Q. Hewett had a second trust upon which he bid?

A. He held a note under the second trust.

Q. Were not two other houses of the same kind sold on the same evening for $4,000?

A. About that.

Q. Were not the three houses offered to Mr. Hewett for about $3,800 apiece?

A. In that neighborhood, but by the time they were completed and taxes paid, I think they would cost about $5,000 apiece, and I think they cost the Cammacks that.

Q. Were not these houses in about the same condition that the house was that you deeded to Campbell?

A. I paid for nearly everything to complete the house after I
113 caused it to be deeded to Campbell. I completed the house because I considered it was my house, and Campbell called it my house.

(Answer excepted to as not responsive.)

Adjourned till to-morrow at 10 a. m.

J. J. JOHNSON,
Examiner.

114 Met pursuant to above.

Present, counsel on both sides, when the cross-examination was resumed as follows:

Q. How do you explain the item of $1,750 under date of August 7th, 1877, in the debtor column in Exhibit A?

A. The proceeds of lot 54 under sale of deed of trust. I suppose that was put in the memorandum at my instance. I think that was the gross amount of sale. I have not given in Exhibit A any credit for the expenses of that sale. I don't think they could have been much, because the trustee was Mr. Campbell's clerk.

Q. In the credit column of Exhibit A, has anything been inserted for interest on the amounts advanced?

A. I think there has been.

Q. Do not the amounts in the credit column represent only what was understood between you and Campbell to be the principal advance?

A. I understood it to be the principal less about five per cent. per month. I think the ten per cent. per annum is not added.

115 Q. What you call the five per cent. a month has been carried to the debtor side of Exhibit A, has it not?

A. I think it has.

Q. You have stated, I believe, that Mr. Campbell was a broker?

A. I have. I think he broke me pretty well.

Q. Did you not have loans from other parties than Mr. Campbell?

A. I had upon property in that square.

Q. Did you not pay to others as large a commission for loans as you did to Mr. Campbell?

(Objected to as immaterial and irrelevant.)

A. Not in any instance that I remember.

Q. Why did you deal with Mr. Campbell, then, if you now think he treated you so badly?

A. Because at the commencement of our dealings I was in want of ready money to pay for labor, &c., and could generally get it of him with less delay than any other. We dealt lib'rally with each other. I by placing a large amount of paper in his hands. What I complain of more especially is his failure to advance me the money agreed upon
116 on the paper on which he held the deed of trust on lot 54. He held the paper and did not advance me the sum he agreed, conse-

quently I was unable to pay my help, and they had to stop. If he had given me that money I think I could have completed the row.

Q. Do you not know that in many cases of advances of money received by you through Campbell that he was acting in his capacity as broker, lending money of other parties?

A. I understood that he was borrowing money occasionally to loan out.

Q. Do you not know that in some cases he was acting as broker in lending money of others?

A. I think he may have done so. He told me he could get $3,000 from Riggs, at 8 % for 90 days, without commissions. I think he got some money of Pat. Byrne, perhaps a thousand or two dollars.

GEORGE BURGESS.

Sworn and subscribed to before me this 6th of Feb., 1878.

J. J. JOHNSON, *Examiner.*

117 JULY 2, 1878.

Met. Present, counsel representing the respective parties, when HENRY H. TALLMADGE, being duly sworn, says:

I reside in New York City at present. During the time of Mr. Burgess' business arrangements mentioned in this proceeding I was a resident of this city. I was engaged at that time, in this city, in the real estate and insurance business, and among other companies I represented the Gerard Insurance Company, Philadelphia. My brother was connected with me in business; his name is L. E. Tallmadge, and the firm name was Tallmadge & Co. Witness is handed Exhibits D, E, & F, and is asked to what do they relate?

A. They relate to money on account of loans. They are made by the Gerard In. Co. to Tallmadge & Co., and the money was paid to Mr. Campbell.

Q. Have you any recollection as to what security was given for that loan, if any?

A. Yes, sir; the security given was one of the houses in the
118 row built by Mr. Burgess.

I heard Mr. Campbell's cross-examination yesterday. I suppose this is the same loan he referred to with the Gerard In. Co. It was on the 8th house from the west end.

Mr. Burgess made application for the loan to me.

I don't know whether I had any conversation with Mr. Campbell about it. I recollect after the loan was made he said to me he wished George could sell the house so that he could have his money out of it. This was immediately, soon after, a month, or two months, perhaps.

He meant Burgess when he said George.

Q. Is that about all that you heard him say?

WITNESS. In reference to that house?

Q. In reference to that house?

A. Yes.

Q. Did you then effect any other loans for Mr. Campbell?

A. No, sir; I think that was the only loan made in his name.

119 Q. Do you know why this loan was made in the name of Mr. Campbell?

(Objected to as not material.)

A. Well, at the time Mr. Burgess applied he said he would like to get about $12,000.

(Conversation with Burgess objected to unless Campbell was present.)

Witness resuming says: On 3 of those houses in the row, that is $4,000 on each house. I told him I thought he could. I asked him then whose names would be used; he said he didn't know. My own. I suggested that I would not do it. I suggest' that he put in the name of some other parties. I think he replied, very well, and mentioned who had he better have; and I think he mentioned at the time, that the title of one was in Mr. Campbell on a temporary loan, and that Mr. Campbell would probably make the paper for the loan on one of the houses. I replied that would be perfectly satisfactory, I presumed. I then asked whose name the other two should be made. He said he didn't know, and asked me if I did not know of some honest man who would give them
120 back to him and not take advantage of him. I then suggested the name of a friend of mine, Mr. Young, who would make the paper, and asked him if he was acquainted with Mr. Young. I think he remarked he was not personally acquainted with him; that he knew him by sight. I said to him I was and would see him about it, which I done. I told Mr. Young the object of it, and he expected to redeem it when desired, and which he made the paper on the 3 houses in the row. The 3rd one of the 3 he was to give security, stood in the name of Mr. Westwood, and was made in his name. The 3rd house, made in the name of Young. I subsequently sold to Dr. Darrell, and Mr. Young conveyed it at once, which was the understanding at the time.

Q. Then in all the conversations you had with Mr. Campbell in relation to this house and lot on which the $4,000 loan was placed, he spoke of the same as Mr. Burgess' property?

(Objected to as not responsive to anything in chief of Mr. Camp-
121 bell's examination and not in rebuttal, and because the witness has stated the subject of his conversation.)

A. He did. He never claimed to own the house, but he remarked several times that he wished George could sell the house so that he could get his money.

Q. What, if anything, do you recollect of a loan made of $2,500 to Mr. Campbell by Riggs & Co. on the security of one of these houses?

A. Burgess said to me that Mr. Campbell had negotiated a loan through Riggs & Co. on the end house of the row. He remarked at the time that he had a note at the time coming due of $1,200 or $1,300 that he was anxious to pay, and that there was an incumbrance on the house at the time of a temporary loan of about $850; that would leave him margin, after paying that, of about $1,500, and that would enable him to meet the note that was coming due. Subsequently I saw Mr. Campbell personally, in company with Mr. Burgess, and he (Campbell) stated to Burgess in my presence that he had negotiated a loan of $2,500 with Riggs &
122 Co.; and he stated further that Mr. W. L. Davis, I think, was the person who held the temporary loan of about $850 that was on it; that he either had seen Mr. Davis, or went to see him, or sent word—one of the three—to come to his office, that he was ready to pay him. Subsequently, perhaps the next day, or within two days, I called again at

Mr. Campbell's office in company with Burgess, and he remarked to Burgess that he (Campbell) had walked pass the house either that night or the morning before, and he noticed that the tin roof was not on; that he (Campbell) had stated to Mr. Glover, at Mr. Riggs' bank, who has charge of the loans, that the tin roof was not on, and that it must be put on at once, and I think at that time asked Burgess to go and see some one on 7th street, or else he stated he had called there or sent word to have that roof put on, and that he did not want to draw the balance of the loan from Riggs & Co. until it was put on, because he was afraid Mr. Glover might pass by there and notice that the roof was not on, and would think it rather strange that he (Campbell)
123 had stated that the roof was on when he made the application. I think the next day, or within a very short time, I called again at Mr. Campbell's office with Burgess, and Mr. Campbell stated that he had given the order to the tin man to put the roof on at once, and that he was preparing it to go on, but could not lay it until the weather had moderated or got warmer. It was very cold weather. Then the money was ready, the balance, the $1,500 or thereabouts, and that Mr. Burgess could have it just as soon as that roof was put on. I subsequently called on Mr. Campbell, I think in the afternoon of the same day, alone, and asked him if the loan had been made, and if there was any doubt about that $1,500 coming to him when the roof was on. He said there was no doubt at all, that the money was in Riggs & Co.'s bank to his credit, or ready, I think he used that word, but that he would not draw any more until the roof was
124 put on. I then remarked to him that Mr. Burgess had a note that was about due, the next day, or in about two days, of $1,200 or $1,300, and that he was anxious to pay it, and that he was counting on that money to do it with. I further asked him if the roof was not got on that day, or if the weather continued cold to prevent it, if he would not draw the balance, or a part of it, and let Mr. Burgess have it towards the payment of that note. He said he did not like to do it, and I remarked that the cost of putting the roof on was about $100, and that the roof would be put on if he, Campbell, said so, and I could see no objections in letting him have the money. He said, no, he would not do it, because it would put him in bad box if Mr. Glover should pass by and see that the roof was not on. I then said that I had the money to pay that note for Mr. Burgess, or would advance it for him, providing I was sure of having it returned within a few days. He replied, there was no doubt whatever about it; that the money was there ready for him, Burgess, and
125 that he could get it within a few minutes if the roof was on there. I then remarked that on the strength of that I would advance the money for the payment of the note, & I done so; and the roof was put on in a few days, and Mr. Burgess, I asked him about it, if he called for the money; he said he had called that morning, but I don't know whether he said Mr. Campbell had not got down to the office or whether he was busy, but he did not get it; that he was going up there again and would see me at my house before night. I do not remember whether I did see him the evening of that day or not, but the first time that I did see him after that he said he had seen Campbell, but that he was very busy and made some excuse and could not attend to it, and I asked him when he was going to; he said he guessed he would fix it up the next day. I then remarked

to Burgess that I wished he would get it; I wanted it, as I had advanced it with the expectation of receiving it back at once. I think that
126 was in the forenoon, and the next time I saw him after that he said that he had seen Campbell and that he acted rather strange about it. He intimated that he was going to charge it up to him against some other debt of that nature. I said then it was just as I expected; that I did not believe he intended to advance it from the first, and that it left me in a very bad predicament. Mr. Burgess said no, he thought Campbell did intend to advance it. He further remarked that he did not believe Peter would use him in any such way as that. Mr. Burgess subsequently went there again and returned with the same report. That was the end of it. I never got the money.

Q. Did you ever go to see Mr. Campbell to get a statement from him concerning Mr. Burgess' transactions?

A. I did, sir. I said to Mr. Burgess, on one occasion after this $1,500 transaction, that I never would obligate myself a dollar further on account of that row until he got a statement of their affairs; that if he would
127 get that statement and show me, and it was then any reasonable sum, that I could get a party to pay the indebtedness to Campbell and discontinue any further transactions with him. He said Campbell would not object to giving a statement, but that he, Burgess, knew pretty well about how they stood, as they had compared notes previous to that, about 4 or 5 months, and that there was a certain balance due him then which was quite small, and that he, Burgess, had an account of every cent that he had received since. I then told Burgess if that was all he owed him, or if that was about the amount, that I had a party ready I would guarantee who would get the money and pay Mr. Campbell all he owed him, provided it did not exceed the sum mentioned. Mr. Burgess said, I will go and see Campbell at once and then see me. I think that was at my house on Q street, in this city. Burgess said, I will drive down and see him and then come down to your office, which he done within two hours, and says it is all right, he is going to give me a statement to-morrow. I saw Mr.
128 Burgess the next day and asked him if he had the statement, or if he had been to Campbell's office. He said that he had, but that Mr. Campbell had been looking up his papers, and that he would get that day or the next day. I told Burguss that it was necessary to have this thing done at once if I was to get the party I had in view to let him, Burgess, have the money, and that he must follow Campbell up and get that statement. I saw Mr. Burgess the subsequent morning, in fact every day for many days after that, and I invariably asked him every morning if he had got that statement. He said he had not, that Mr. Campbell was so busy at his office during the day he had not time, but that he had taken or was going to take his books and papers up to his house and make it up that evening. Some two or three days after that, enquiring of Burgess daily for the statement, I said to him, I will go up to Mr. Campbell's office with you, and done so. I saw Mr. Campbell, asked him if he had that statement for Mr. Burgess he was going to furnish him;
129 he said he had not yet, that he intended to make it out the night before, but that he had been sick. I then said, I wish you would get it, because I think I can manage to pay up Mr. Burgess' indebtedness to you. He said, very well, that is all he wanted. I think I asked at

that time if he could approximate about the amount. He said he could not, but that he would get it up, and if he felt well he would work at it that night, so that Burgess could have it the next day. For several days I asked Burgess if he had got the statement as promised; he said that he had not, and that he did not know that he was going to get it. I remarked, that is about the way it looks. After that, a few days, Mr. Burgess came to my office and said he had just come from Campbell's, and that Campbell had then told him that he would not give him a statement—either him or Tallmadge—and that Campbell further remarked that I know what he, Tallmadge, wants, and I am
130 not in a hole, and don't propose to put my head in one yet. This is what Burgess told me he, Campbell, said. I then gave up all negotiation.

(All of the evidence in the two preceeding answers as to the conversation between witness and Burgess when Campbell was not present is objected to.)

Q. (Witness is here shown four checks, marked B, C, G, & H, for the sum of $200, $1,050.83, $1,000, $3,000, respectively, signed by H. H. Tallmadge and Tallmadge & Co., on the Citizens' National Bank, payable to the order of Peter Campbell, and by him indorsed, and is asked to state for whose account that money was paid.)

(Objected to as not being in rebuttal.)

A. They were on account of loans on that row—I don't know what particular loans—for paying off liens for Burgess.

Cross-examined by Mr. EDMONSTON:

I reside in New York City now. I came on to testify in this case, and for some other matters I had; not particularly for this. I came
131 on at Mr. Burgess' request before he left. My expenses were not paid me nor tendered me before I left. Not a penny, not one iota, has been paid me or tendered me.

I have talked on this subject a great many times with Mr. Burgess. I did not have any relations with Mr. Burgess on account of the *these* buildings more than get him loans at first; afterwards I endorsed some notes for him on account of the buildings. I made many loans on the houses. I made three or four permanent loans. I made some temporary loans. In making these loans I was acting as agent. I don't think I made him any loans as principal, except when I made him a loan of a few hundred dollars for a few days. I don't know whether he is indebted to me now. I never looked to see. I had no other business transaction with Burgess, except selling two of the houses as agent.

Mr. Burgess did convey some of those houses to me, simply in trust. I do not hold any of those houses now in trust. I never purchased
132 any of those houses from him. I may have had it transferred to me to transfer again. I lived in one of the houses. That one was not purchased in my name from Burgess. It was purchased in my wife's name. That house was paid for by property turned in and some cash. The cash was furnished by my wife and myself. The consideration of this house was not in consideration of any indebtedness he owed me at that time. He did not owe me a dollar at that time. I had never made a loan to him at that time. I am not engaged at present in any business relations with Mr. Burgess.

When I made endorsements for Burgess I did not receive a dollar consideration for it. Mr. Burgess at times transferred some property to me to secure me endorsements or some obligations, but I never realized a cent from them; they were all swept away. Burgess did say to me verbally that he wished I would take a hold and help to finish the houses; that he believed there was money in them. I don't recollect the
133 time when it was. No proportion of the profits were determined upon that I should receive, he simply wanted me to help him to put them through, and it was left to his honor if any profits were made what proportion I should receive. I do not know nor am I informed that Burgess is to receive any advantage in this suit by any arrangement made between Burgess and the plaintiff. I don't know that I hold any of Burgess' notes now. I do not know how we stand, but I do not think he has paid me all he owes me.

H. H. TALLMADGE.

Sworn and subscribed to before me this 2nd of July, 1878.

J. J. JOHNSON, *Examiner.*

134 DISTRICT OF COLUMBIA,
County of Washington, ss:

I, John J. Johnson, examiner in chancery, do hereby certify that in pursuance of the agreement the foregoing depositions were taken down and by me reduced to writing in the presence of, and from the statement of, the witnesses at the time and place designated in the caption thereof, and were then and there by me read over to the witnesses, and by them subscribed in my presence and in the presence of the respective solicitors who were then and there attending. The witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause, or in any manner interested therein.

JOHN J. JOHNSON,
Examiner in Chancery.

135 In the supreme court of the District of Columbia

CEAS *vs.* BURGESS ET AL. } In equity. No. . Doc. .

DISTRICT OF COLUMBIA,
County of Washington, ss:

Be it remembered that, at an examination of witnesses begun and held on the 10' day of June, A. D. 1878, and continued from time to time, by a'journment, until the 16' day of July, A. D. 1878, when the within depositions were taken, I, John J. Johnson, an examiner in chancery, did cause to be personally present at my office, No. 342 D st., in the city of Washington, in said District, the within-named witnesses, to testify on the part and behalf of the defendant in a certain cause now depending in the supreme court of the District of Columbia, wherein Ceas is complainant and Bur-

gess et al. defendants. That said witnesses were duly sworn to tell the truth, the whole truth, and nothing but the truth touching the mat-
136 ters at issue; that the statements from said witnesses were taken down and reduced to writing by me in the presence of the respective solicitors who were then and there attending. I further certify that I am not of counsel for any of the parties, nor am I interested in the result of said cause.

J. J. JOHNSON,
Examiner in Chancery.

137 JUNE 10, 1878.

Met pursuant to agreement. Present, counsel on both sides, when PETER CAMPBELL, being duly sworn, says:

(Witness looks at the original deed of trust from Mary H. P. Burgess to Wm. R. Slater, and says:) Beginning after the word "whereas," I believe to be in the handwriting of George Burgess, down to the word "and being desirous."

The said deed is hereto marked Exhibit P. C. A, and filed.

EX. P. C. A.

This indenture, made this tenth day of February, in the year of our Lord one thousand eight hundred and seventy-seven, between Mary H. P. Burgess and George Burgess, her husband, of Washington City, in the District of Columbia, of the first part, and William R. Slater, trustee, of the same place, of the second part:

Whereas said George Burgess has made and executed four certain promissory notes, each for the sum of ($1,000) one thousand dollars, all bearing even date with these presents, and payable to the order of himself four months after date, with interest at the rate of ten per cent.
138 per annum until paid, and payable at the Citizens' National Bank, Washington, D. C., and being desirous to secure the punctual payment of said notes when and as the same shall become due and payable, with all interest and costs due and accruing thereon, as well as any renewals or extensions, therefore execute these presents: Now, therefore, this indenture witnesseth that the said parties of the first part, for and in consideration of the premises aforesaid, and further, the sum of one dollar in lawful money of the United States paid to them by said party of the second part, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, and the survivor of them, his heirs and assigns, the following described real estate, situate in the City of Washington, District of Columbia, to wit:

All of lot numbered (54) fifty-four, in Chipman, Exley, and Richards', trustees, recorded subdivision of square numbered (240) two hundred and forty, as the same is of record in the office of the surveyor
139 for said city or District, together with all the easements, hereditaments, and appurtenances to the same belonging or in any wise appertaining, and all the estate, right, title, interest, and claim whatsoever, whether in law or in equity, of the said parties of the first part, of, in, to, or out of the said piece or parcel of land and premises. To have

and to hold the said piece or parcel of land and premises, with the appurtenances, unto and to the use of the said party of the second part, the survivor of them or his heirs and assigns, in and upon the trusts nevertheless, hereinafter mentioned and declared, that is, in trust to permit the said Mary H. P. Burgess, her heirs or assigns, to use and occupy the said described premises, and the rents, issues, and profits thereof to take, have, and apply to and for her and their sole use and benefit, until default be made in the payment of said notes or either of them, or any installment of interest due thereon, or any proper cost, charge, commission, half commission, or expense in and about the same.

140 And upon the full payment of all of said notes and any extensions or renewals thereof, and the interest thereon, and all other proper costs, charges, commissions, half commissions, and expenses incurred by means of these trusts, at any time before the sale hereinafter provided for, to release and reconvey the said described premises until the said Mary H. P. Burgess, her heirs, or assigns, at her or their cost.

And upon this further trust, that upon default being made in the payment of any of said promissory notes at maturity, or any installment of interest due thereon, or any proper cost, charge, commission, half commission, insurance, or other proper expense, in and about the same, then and at any time thereafter to sell the said piece or parcel of land and premises or any portion thereof, at public auction in front of the premises, after at least ten days' notice of the time, place, and terms of sale, by advertisement in some one or more of the newspapers printed and published in the said city of Washington upon such terms and conditions as the said trustees or the survivor of them may deem most advantageous to the parties

141 interested; and with further power to postpone the sale from time to time in their or his discretion, and to resell on default of the purchaser.

And upon this further trust, upon full compliance with the terms of sale, to convey the property sold in fee simple to the purchaser or purchasers thereof, at his, her, or their cost and expense, and without any liability to the said holder or holders, or to the purchaser to see to the application of the purchase money, and out of the proceeds of said sale or sales, first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of two per cent. on the amount of said sale or sales; secondly to apply said purchase money to the payment of whatever may then remain unpaid of the said notes or any of them and the interest thereon to the time of said sale, whether the same shall be due or not; and lastly, to pay the remainder, if any, to said Mary H. P. Burgess, her heirs or assigns.

And the said Mary H. P. Burgess doth hereby covenant with the said parties of the second part, the survivor of them, his heirs, and assigns, that all taxes upon the said land shall be duly paid, and that the building

142 on said parcel of land shall be kept insured, by the said party of the first part, during the continuance of this trust, in some good and responsible fire insurance company or companies to the satisfaction of the parties of the second part, in the sum of two thousand dollars, and the policy or policies of insurance be assigned to the said parties of the second part, as trustees under these presents; and further, that in case the said Mary H. P. Burgess, her heirs or assigns, shall fail to pay taxes or to

keep said property so insured and assigned, then the taxes may be paid, and the property be insured for the amount aforesaid by the said parties of the second part, the survivor of them, his or their heirs and assigns, and the amount of premium and taxes paid shall be considered a part of the expenses of said debt secured hereby, in default of payment of which the said parties of the second part, the survivor of them, his heirs and assigns, shall have power to sell said property hereby conveyed as aforesaid, and shall dispose of the proceeds of sale as hereinbefore provided.

And it is further agreed that if the property shall be advertised
143 for sale under the provisions of the deed, and not sold, then the said trustees shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

MARY H. P. BURGESS. [SEAL.]
GEORGE BURGESS. [SEAL.]

Signed, sealed, and delivered in the presence of—
GEO. F. GRAHAM.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Geo. F. Graham, a notary public in and for the District aforesaid, do hereby certify that Mary H. P. Burgess and George Burgess, her husband, parties to a certain deed bearing date on the ninth day of February, A. D. 1877, and hereto annexed, personally appeared before me, in the District aforesaid—the said Mary H. P. Burgess and George Burgess being personally well known to me to be the persons who executed the said
144 deed—and acknowledged the same to be their act and deed; and the said Mary H. P. Burgess being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and notarial seal this ninth day of February, A. D. 1877.

GEO. F. GRAHAM, [SEAL.]
Notary Public.

This deed is in the form now as recorded in which it was given to me. The notes described in the original deed were given to me at the time the deed was delivered. These notes were given to me as security for advances made and to be made on account of George Burgess. There was no specified amount named to be advanced. I had made advances up to and prior to the maturity of the note. Those advances had not been repaid to me.

When the notes became due I had the property sold for default
145 in the payment of the notes, in the regular way. I had the property advertised, and it was sold under the trust, and it was bought in, I being the purchaser, for $1,750, was the bid, I believe. A deed was executed to me by the trustee. The deed now shown me is the deed.

(The same is marked Exhibit P. C. B, and filed.)

Ex. P. C. B.

This indenture, made this seventh day of August, in the year of our Lord one thousand eight hundred and seventy-seven, between William R. Slater, of Washington, District of Columbia, as trustee, of the first part, and Peter Campbell, of the same city and District, of the second part, witnesseth:

That whereas, by deed dated February 9th, A. D. 1877, Mary H. P. Burgess and her husband, George Burgess, of the said city and District, did grant and convey to the party of the first part certain real estate in the city of Washington, District of Columbia, in trust to secure the payment of a certain debt, and with power and authority, in case of default in the payment of said debt or the interest thereon, to sell said real es-
146 tate at public auction; all of which will appear from said deed, duly recorded in liber No. 842, folio 356, one of the land records of said District; and said George Burgess having made default in the payment of said debt, and the legal holder of the note for said indebtedness having requested a sale of said real estate; and the said party of the first part as trustee having, after previous advertisement of the time, manner, place, and terms of sale, exposed said real estate herein conveyed, on the seventh day of August, A. D. 1877, at public auction, at which said sale said party of the second part, being the highest bidder for said herein conveyed real estate, became the purchaser thereof at and for the sum of seventeen hundred and fifty dollars ($1,750), which said amount hath been by him fully paid and satisfied to the said party of the first part, and the said party of the second part is entitled to a conveyance of said premises:

Now, therefore, this indenture witnesseth that said party of the first part, for and in consideration of the premises aforesaid, and, further, the sum of five ($5) dollars, in lawful money of the United States, to him in hand paid by the said party of the second part, at and before the
147 sealing and delivery of these presents, the receipt whereof is hereby acknowledged; hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever, all that certain piece or parcel of ground situate, lying, and being in the city of Washington, District of Columbia, and known and distinguished upon the ground plat or plan thereof as and being lot numbered fifty-four (54) in Chipman, Exley, and Richards' trustees, recorded subdivision of square numbered two hundred and forty (240), as the same is of record in the office of the surveyor for said city and District, together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in any wise appertaining; and all the estate, right, title, interest, and claim whatsoever, either at law or in equity, of the said party of the first part of, in, and to the said piece or parcel of land and premises; to have and to hold the said piece or parcel of land and premises, with the appurtenances, unto and to the use of the said party of the second part, his heirs and assigns, forever.

148 In testimony whereof the said party of the first part, as trustee

as aforesaid, hath hereunto set his hand and seal on the day and year first hereinbefore written.

WILLIAM R. SLATER, *Trustee.* [SEAL.]

Signed, sealed, and delivered in the presence of—
HARRY C. HAYDEE.
L. E. BENKET.

DISTRICT OF COLUMBIA,
County of Washington, ss:

I, Holmes E. Offley, a notary public in and for the county aforesaid, do hereby certify that William R. Slater, trustee, party to a certain deed, bearing date on the seventh day of August, A. D. 1877, and hereunto annexed, personally appeared before me, in the county aforesaid, the said William R. Slater, trustee, being personally known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and official seal this sixteenth day of August, A. D. 1877.

HOLMES E. OFFLEY, [SEAL.]
Notary Public.

149 This was an unfinished house when it was sold; walls up and roofed in. There was no brick bay windows in front. I had them put in myelf. The plan of the house contemplated double bay window.

After the deed was given me, I waited until the wind blew off the roof, then I finished it off and sold it.

No objections that I know of were made by either Mr. Burgess or his wife on account of the sale. They never requested me to postpone the sale, and never made me an offer to redeem the property.

The house on lot 84, at the time it was conveyed to me by Burgess and wife, the walls were up, and doors and windows were tacked in temporarily, some of them. The floors were not laid, and it was not plastered.

After I received the deed for that house I finished it at my own cost, and I am now living in it.

Q. Can you give an approximate idea how much the house on lot 84 cost you after it was deeded to you?

(Objected to as incompetent unless the question is confined to the original plans and specfications for those houses.)

150 A. I cannot very closely, having purchased material and paid for the labor of finishing several houses together. Say, between $2,000 and $3,000.

I completed the house some time last fall; September, I think.

After the delivery of the deed to me no claim was ever made by either Mr. or Mrs. Burgess, that the house belonged to them. The purchase was absolute. I purchased it and finished it for my use, and so informed Burgess at the time of purchase.

I paid, as a consideration for the deed, money advanced on second trust notes, and assuming the first trust. No part of the consideration was paid at the time of the delivery of the deed. I could not tell the precise day the deed was delivered. Perhaps I might have advanced him some money on that day. I don't recollect now.

After the house was deeded to me and some time subsequent I did make a loan on it, for, I think, $2,500. About the time the house was
151 deeded to me, I paid the incumbrance which I assumed, that was upon it, when I purchased it.

I paid Mr. Wm. L. Davis the first lien on that house.

I think I took up and paid a lien to Davis on account of Burgess. I believe I paid him for an extension of a lien on lot 81.

Witness looks at checks marked, P. C. 3 and 4; says these checks were paid to George Burgess. They came back to me in the regular way, in settlement of my bank account.

EXHIBIT P. C. 3.

No. 806.] WASHINGTON, D. C., *Sept.* 1, 1876.

Citizens' National Bank, pay to Geo. Burgess, or bearer, four hundred and twenty-five dollars.

$425.] PETER CAMPBELL,

(Endorsed: GEORGE BURGESS.

(Stamp:) Citizens' Nat'l Bank, Washington, D. C. Paid Sept. 2, 1876.

EXHIBIT P. C. 4.

No. 288. WASHINGTON, D. C., *Sept.* 1, 1876.

Riggs and Co., pay *of* Geo. Burgess, or bearer, four hundred and twenty-five dollars.

$425.] PETER CAMPBELL.

152 The house, and lot 75 was purchased by me at the earnest request of Mr. Burgess, who desired me to own and occupy a house in the row.

On September 1, 1876, I paid for the house, the trust notes on it for Burgess amounting, principal and interest, $3,075. I paid taxes amounting to about $100, and $425 in money. I paid on that day in all about $3,600. The house at that time was in an unfinished condition.

After the deed for lot 75 was given to me, I encumbered it by a deed of trust. I borrowed $3,000 on it from Riggs and Co., giving my trust note on the house for 3 months from Sept. 1st. This note of $3,000 was paid by myself. About the time the house was nearly completed I borrowed $4,000 on it from the Gerard Fire In. Co., of Philadelphia, through their agents in this city, Mr. L. C. Tallmadge. I gave my own note for it. I was paid the money by Tallmadge's checks. Exhibits D, E, and F I believe to be the checks that I received the $4,000 upon. I paid the incumbrances that were on lot 75 prior to the time it was deed' to me. [The two $3,000 and $4,000 loans made on lot 75 were made entirely for my own benefit.]

153 (All enclosed objected to as irrelevant.)

Q. State whether there was any written agreement between you and Burgess that you would reconvey lots 54, 75, and 84, or any written agreement by which you undertook to hold them in trust for him?

A. No agreement whatever, either oral or written. I did not sign or

make any agreement in reference to these houses. Exhibits G and H were for the payment, I think, on lot 70.

I finished house on lot 75 at my expense.

Adjourned till Thursday, the 13th inst., at 10 a. m.

J. J. JOHNSON,
Examiner.

154 JULY 1ST, 1878.

Met pursuant to agreement.

Present, counsel on both sides, when the cross-examination was commenced, as follows:

Q. You say you agreed to advance Burgess $2,500 to $3,000 on lot 54 when the house on it should be roofed in. Was this on the security of the deed of trust from Burgess and wife to Slater?

(Objected to, for the reason that the witness has not said he agreed to advance it.)

A. I have not stated anything of that sort, and I never made any such agreement.

Q. What amount of money did you advance on the security of that deed of trust?

A. About $2,000, I should think—a little more—on lot 54, R-street house.

Q. Reflect a little and see if not $600 was all you advanced?

A. It needs no reflection. I advanced about $2,000.

Q. Were you in this city when said lot 54 was sold under said deed of trust?

A. I was not.

Q. Where were you?

A. I was in the State of New York or Vermont.

155 Q. Mr. Slater was at that time your clerk, I believe?

A. Yes, sir.

Q. Now deceased?

A. He is.

Q. Referring to lot 84, mentioned in the bill, how much material did Mr. Burgess turn over to you towards finishing the house, and in what did it consist?

A. At the time I accepted the deed for advances made on house and lot 84, he turned over to me for those advances a lot of doors and windows, sash, blinds, and hardware, and placed them in my possession, I declining to accept the deed until he agreed so to do, which he did do.

(So much of the answer as does not respond to the question is objected to.)

Q. About what was the value of the materials so turned over to you?

A. I should suppose $500 would be a liberal valuation.

Q. Did you finish any other house in which Mr. Burgess was connected in that row; if so, what other house?

(Objected to as not responsive to the examination-in-chief.)

A. I finished house on lot 75 for myself, that I purchased of
156 Burgess, paying for it more than its value.

(So much of witness' answer as does not respond to the question is objected to.)

Q. Do you recollect in a conversation with either George Burgess or H. H. Tallmadge, about Feb'y, 1877, in reference to house and lot 84, saying you would let Burgess have $1,500 when the tin roof was on?

A. I never said anything of the kind.

Q. Did you have any conversation with either of those gentlemen about the time indicated?

A. I might have had some conversation with them about some matters; I don't recollect.

Q. You say your purchase of house and lot 84 was absolute; from whom did you purchase and what was the price and how did you pay it?

A. I purchased the house at the urgent solicitation of Mr. Burgess, and through him, for the advances I made on the first notes he gave me for security, which were then overdue, and assuming the first trust of $884.

Q. What was the aggregate of the advances you speak of which was a part of the consideration for that house and lot?

157 A. About $2,100, and the 1st trust, making about $3,000 in all.

Q. Were not those advances made by you on Burgess' notes, secured by deed of trust on other property than lot 84?

A. On 84 only.

Q. Out of the $2,500 loan on lot 84, of which you speak, were you not to let Mr. Burgess have $1,500?

A. I have no recollection of agreeing to let him $1,500 for any purpose; but certainly not on that house. I don't recollect whether I agreed to let him have $1,500 out of that loan for any purpose.

Q. What did you do with the col'atteral notes on which you advanced the sum of $2,200?

A. I think I gave them to Burgess. I don't recollect. They are cancelled wherever they are. I mean the trust notes; there were no col'atteral notes.

Q. Referring to your checks, marked P. C., 3 and 4, to your examination-in-chief, don't you now recollect that after drawing check No. 4, on Riggs and Co., you concluded before you delivered the same to Mr. Burgess not to draw on that bank that day, and thereupon, you gave

158 him a check, No. 3, on the Citizens' National Bank, in lieu of No. 4?

A. I gave him a check on Riggs' Bank, of Sept. 1st, for $425, the same bank the other checks were drawn on; the same day they were all paid by the bank. He had a check for $425 on the Citizens' Bank as well. They were both given by me to Burgess.

Q. On the 1st of Sept., 1876, you advanced Mr. Burgess $500 to increase a loan made by you to him for $3,000 to $3,500 on the security of lot 70 or 75, I believe?

(Objected to as not responsive to anything in the examination-in-chief.)

A. I advanced to Mr. Burgess $500, or $425, in cash, on other property than lot 75, or any of this property in suit.

Q. With reference to your testimony as to the Gerard Fire Insurance Company loan, do you recollect who made the application for that loan?

A. Perfectly. I asked Mr. H. H. Talmadge, who is present here, if his company would loan me $4,000 on my house and lot 75 when finished. To which he replied, oh, certainly.

159 Q. Do you recollect at that interview or any other with Mr. Talmadge concerning this loan, that it was for Mr. Burgess' benefit, and that he should have the house and lot 84 back again?

A. There never was any such understanding, or any interview with either Burgess or Talmadge that this loan was for his benefit.

Q. Do you recollect whether Mr. Burgess took any part in the negotiation for this loan?

A. At the time I purchased this house from Mr. Burgess, at his urgent request, in its unfinished condition, he had, he said, more houses than he could finish. He stated to me, as I was reluctant to purchase, that when finished by me the Gerard In. Co., through their agent, would undoubtedly loan me $4,000 on it, and promised to use his influence with their agent to that end.

Adjourned till to-morrow at 3 p. m.

J. J. JOHNSON, *Examiner.*

160 JULY 16, 1878.

Met pursuant to notice. Present, counsel on both sides; when Mr. Campbell was further cross-examined by Mr. Duhamel, as follows:

There was only one of the checks of Sept. 1st on lot 75. Both checks were of the same amount.

There was in the neighborhood of $3,000 paid on lot 84. I can approximate the sums making up this sum. One item I paid 14th June, of $500, and interest at 10 %, for which a note at that time was given, subsequently cancelled, and the amount charged as an advance on the trust notes on lot 84; July 22, Mr. Burgess received in cash $1,000, for which a trust note was given as security on 84, Aug. 25th, $50; Sept. 26, $110; Nov. 18, $150; Nov. 22, $75; Nov. 25, $30; Dec. 1st, $20. 1st lien paid to W. L. Davis, $884. These, I believe, include all the items except interest, at 10 %, taxes, and conveyances. I can't tell exactly now how much taxes I paid. The items aggregated about $3,000 I paid on lot

161 54, on Oct. 4th, 1876. Burgess received $200 on a note, running at 10 %, which was renewed and subsequently cancelled by the substitution of trust notes on 54. No. 1, Burgess note for $500, which was cancelled after maturity. The trust notes on 54 being substituted for the money advanced; Dec. 1st, cash $10; Dec. 4th, cash $55; Dec. 6, cash $15; Dec. 8, $10; Dec. 8, note of H. H. Tallmadge to Geo. Burgess, order $400; Dec. 14, $242, demand note; Dec. 14, cash $20; Dec. 16, cash $300; Dec. 16, cash $50; Dec. 26, cash $25; Dec. 30, cash on note, $100; Jan. 6, '77, cash $20; Jan. 10, cash $6; Jan. 13, cash $15; Jan. 17, to J. W. Stow, order Burgess, $41.25; Jan. 24, cash $12; Feb. 12, cash $250; March 14, cash $10; bill for roofing to O'Donnell, $235.02; expenses of sale, $97.12; taxes amounted to about $100. That comprises nearly all the advances. The notes above spoken of were cancelled, and the trust notes substituted for the above advances spoken of.

162 Dec. 16 was a credit $600 on these advances, which left the amount of advances upwards of $2,000. I will furnish the amount of taxes; I did not know they were wanted, or I would have furnished them. I think I sold house on lot 54 in May last to Mr. K. Noew. Mr. Burgess never requested an account of me directly; on the contrary I asked him to do it, and he said he was not able to do it. Mr. Tallmadge never requested

me for an account. I never had any conversation on the subject of my account with Burgess with Tallmadge.

PETER CAMPBELL.

Sworn and subscribed to before me this 16th of July, 1878.

J. J. JOHNSON,
Examiner in Chancery.

163 In the supreme court of the District of Columbia.

SAMUEL CEAS
vs.
PETER CAMPBELL ET AL. } In equity. No. .

This cause came on to be heard and was argued by counsel for the several parties thereto and thereupon, upon consideration thereof, it is ordered, adjudged, and decreed this 4th day of March, 1879, that the bill and the petition in the above case be, and they are hereby, dismissed with costs.

By the court.

MACARTHUR, *Justice.*

164 In the supreme court of the District of Columbia.

CEAS & HEWETT
vs.
BURGESS ET AL. } 5767. Eq. doc. 17.

The clerk will please enter this cause appealed by the complainants from the decree rendered in special term March 4th, 1879, dismissing the bill and petition.

HINE AND THOMAS, AND
HENKLE AND DUHAMEL,
Sol'rs for Complainant'.

Appeal as directed entered.

By the court.

165 In the supreme court of the District of Columbia.

CEAS & HEWETT
vs.
BURGESS ET AL. } No. 5767. Eq. doc. 17.

This cause came on to be heard upon the complainants' appeal from the decree of the special term of March 13*rd*, 1879, dismissing the bill and petition of complainant Hewitt, and was argued by counsel and submitted to the court; whereupon it is now here ordered, adjudged, and decreed that the said decree of the special term be, and the same is hereby, affirmed with costs.

166 In the supreme court of the District of Columbia.

CEAS & HEWETT
vs.
BURGESS ET AL. } No. 5767. Eq. doc. 17.

The complainant Hewitt, by his solicitor, Mr. Henkle, comes and prays

an appeal to the Supreme Court of the United States from the decree of the court at the present term, and the same is allowed; and the court orders that the penalty of the appeal bond shall be five hundred dollars.

167 In the supreme court of the District of Columbia, the 14th day of July, 1880.

SAMUEL CEAS
vs.
GEORGE BURGESS ET ALS. } At law. No. 5767. Equity doc. 17.

Know all men by these presents that we, Robert C. Hewett, Samuel Ceas, and Patrick Corcoran, are bound unto the defendant below, Peter Campbell, in the sum of five hundred dollars ($500), lawful money, to be paid to the said Peter Campbell, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 14th day of July, 1880.

Whereas the above-named Robert C. Hewett has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

168 Now, therefore, the condition of this obligation is that if the above-named Robert C. Hewett shall prosecute his said appeal to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) ROBERT C. HEWETT. [SEAL.]
SAMUEL CEAS. [SEAL.]
PATRICK CORCORAN. [SEAL.]

Sealed and delivered in presence of—
L. E. BURKET, to Hewett.
C. S. MOORE, to Ceas & Corcoran.

Approved July 16, 1880.

A. B. HAGNER,
Asso. Justice.

169 The issuing and service of citation is waived. Sept. 21, 1880.
W. E. EDMONSTON,
Sol'r for Defendant Peter Campbell.

170 *Authentication of record.—Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 5th day of August, 1880.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 5th day of Aug., 1880.

[SEAL.]

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, R. J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 5th day of August, 1880.

[SEAL.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

(Indorsement on cover:) No. 271. Robert C. Hewett, appellant, vs. Peter Campbell. Dist. of Columbia, supreme court. Filed 22nd September, 1880.

109-108

OFFICE SUPREME COURT U. S.
FILED
OCT 11 1883
JAMES H. McKENNEY, Clerk.

Supreme Court of the U. S.

OCTOBER TERM 1883.

ROBERT C. HEWETT, *Appellant*,

vs.

PETER CAMPBELL, *Appellee*.

Appeal from the Supreme Court of the District of Columbia.

BRIEF OF APPELLANT

S. S. HENKLE,
Counsel for Appellant.

HENKLE & POLKINHORN, PRINTERS, 1010 AND 1012 PENN. AVE.

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Supreme Court of the U. S.

OCTOBER TERM, 1883.

ROBERT C. HEWETT, *Appellant*,
vs.
PETER CAMPBELL, *Appellee*.

Appeal from the Supreme Court of the District of Columbia.

BRIEF OF S. S. HENKLE, COUNSEL FOR APPELLANT.

STATEMENT OF THE CASE.

The original bill was filed by Samuel Cease against George Burgess, Mary H. P. Burgess, Peter Campbell, and William R. Slater. The bill sets out that Cease was the holder of two judgments against the defendant, George Burgess, upon both of which executions had been issued and returned *nulla bona*. That Burgess has no property real, or personal, within the jurisdiction of the court, but that he has equitable interests in lots 54, 75, and 84 in Chipman, Exley and Richards' subdivision of square No. 240 in the city of Washington, more than sufficient, if sold, to satisfy his judgments. These lots are on Q street between Thirteenth and Fourteenth streets, N. W. That prior to the 1st of April, 1876, the defendant, George Burgess, had been extensively engaged in building operations, and that on that day he

purchased from John and Edward Cammack a number of lots on Q street, with the view of building a row of houses upon them. Among the lots were those mentioned, Nos. 54, 75, and 84. That Burgess was embarrassed and his creditors were pressing for payment, and to enable him to carry out his project, without annoyance from his creditors, he caused the titles to all the lots to be made from the Cammacks to his wife, Mary H. P. Burgess.

No part of the purchase money was paid at the time of the purchase and conveyance of the titles; but it was agreed between Burgess and the Cammacks that he would at once proceed to cover the lots with valuable dwelling houses, and hence he was enabled to purchase the whole property entirely on credit. It was further agreed that the lots were to be conveyed in pairs, or two in a deed, and that a deed of trust was to be given upon each two lots, corresponding with the deeds of conveyance, and that as the houses should be completed every alternate house and lot should be released from the encumbrance. Thus enabling Burgess to borrow money upon or to sell one of the houses whenever he should have completed two, the Cammacks considering one finished house and the lot as sufficient security for the two vacant lots.

The deeds of trust upon lots 54, 75, and 84 were all released by the Cammacks upon the completion of the houses, with which they were severally joined.

On the 11th of July, 1876, Mrs. Burgess and her husband conveyed lot 75 to the original defendant, William H. Doe, who was the brother-in-law of George Burgess. On the 26th of August, 1876, Doe, at the request of Burgess, conveyed said lot to the defendant Campbell.

On the 25th of October, 1876, Mrs. Burgess and her husband conveyed lot 84 to Campbell.

On the 10th of February, 1877, Mrs. Burgess and her husband made a deed of trust on lot 54 to the original de-

fendant, William R. Slater, trustee. The deed purported to be made to secure four notes for $1,000 each of the same date drawn by George Burgess, and payable to his own order four months after date, with ten per cent. interest until paid. These notes were all delivered to Campbell. The bill charges that no money was in fact paid for the notes, but that it was a scheme between Burgess and Campbell to defraud Burgess' creditors.

When the notes became due, Slater, the trustee, advertised and sold the lot to Campbell for $1,750. The bill charges that there was an understanding between Burgess and Campbell, that when Burgess should reimburse Campbell what he had advanced him these lots were all to be reconveyed; that the deeds were in fact mortgages; that Campbell has been fully repaid all his advances to Burgess, and that Burgess is entitled to a reconveyance of each of said lots.

The bill further charges that Campbell retained at least $3,000 of usurious interest from Burgess. That Mrs. Burgess, at the time these purchases were made from the Conmacks, had no money or property of any kind of her own, and that she, in fact, paid no part of the purchase money.

The bill prays for an accounting between Burgess and Campbell, and if it shall appear that Campbell has been fully paid, he shall be decreed to convey said lots to Burgess; and if it shall appear that he has not been fully paid, the deeds shall be declared mortgages for the amount of money due Campbell by Burgess, and that the equity of redemption be subjected to plaintiff's judgments, for discovery, &c.

The present appellant, Robert C. Hewett, filed a petition, October 8th, 1877, to be admitted as a party complainant, setting up a judgment against Burgess for $5,080.25, the issue of execution, and a return of *nulla bona*, which was allowed by the court.

Campbell answered, denying that Burgess had any interest, legal or equitable, in the lots.

Admits that Mrs. Burgess and husband conveyed lot 75 to Doe, and that Doe conveyed to him for a valuable consideration, without notice of any right or claim of plaintiff in or upon the same.

Admits that Mrs. Burgess and husband conveyed lot 84 to him *bona fide* and for a valuable consideration, without notice on his part of any claim or demand of the plaintiff upon the same.

Admits the making of the deed of trust on lot 54 to Slater for $4,000; claims that the notes were given him as security for advances made on the faith of said notes; denies that it was a scheme to defraud Burgess' creditors; states that at the time of the sale of the lot by Slater, trustee, defendant was the holder of the notes for value, without notice of the claims or demands of any person upon the same; claims that the trustee made a valid sale to him for $1,750, and conveyed to him by a good deed.

Denies that he ever had any agreement with Burgess to re-convey; denies that he ever had any agreement in writing to re-convey, and sets up the Statute of Frauds.

Denies that Burgess has repaid him all the money he owed him, or that he is entitled to a reconveyance of said lots, to him or anybody else.

Declines to answer whether he had received $3,000 of usury, and states that his answer might subject him to penalties or forfeitures, and that he ought not therefore be required to answer.

Demurs to the prayer for discovery, that the discovery might subject him to penalties and forfeitures.

Claims to have purchased said lots *bona fide* for a valuable consideration, without notice of any claim or demand of the plaintiff.

Relying upon his deeds, he has made expenditures in finishing the houses, &c.

The original defendant, Slater, answered, admitting that he made the sale of lot 54 under the deed of trust to Campbell, and that he made a deed to Campbell; says he made the sale at the request of Campbell, believing the deed of trust to be *bona fide*.

The defendants, George and Mary H. P. Burgess, did not answer, and a decree *pro confesso* was taken against them. (Rec., p. 11.)

Testimony was taken upon both sides, and upon the hearing in the special term the bill was dismissed (Rec., p. 59), which decree was affirmed by the court in general term (Rec., p. 59.)

The complainant, Hewitt, brings the appeal to this court, the complainant, Cease's, claim not being large enough to give jurisdiction to this court.

It is not pretended that Mrs. Burgess had anything to do with the making of the contract with the Cammacks, save that the titles were made to her, and she signed the notes and deeds of trust at the request of her husband. Nor is it pretended that she was the owner of any property or money in her own right. The whole of the evidence shows that the transaction was entirely between Burgess and the Cammacks, and she was the mere passive recipient of the titles.

At the commencement of this suit, the titles to these three lots had all passed to and were then in the defendant Campbell.

The theory of the bill and of the case is, that Campbell was not the *bona fide* purchaser of these lots, or of either of them, although he holds them by conveyances apparently absolute; but that he was Burgess' broker, and the conveyances were made to him as such, to enable him to raise money upon them for the use of Burgess, less his own reasonable and lawful charges.

That he did raise money upon these titles, a part of which he doled out to Burgess, charging him at the rate of five per cent. per month, in addition to ten per cent. per annum for the money raised upon the security of his own property, besides retaining for himself a large share of the money and the property itself.

It is a significant fact that although the defendant in the third prayer of the bill, is called upon for a detailed statement of his dealings with Burgess, in respect of advances made him in aid of his building operations, (Rec. p. 4), in his answer he makes no statement of account whatever, and gives no reason for omitting it. The fourth prayer of the bill calls upon the defendant to discover and set forth in his answer what rate of interest he charged Burgess on the several sums advanced him. (Rec. p. 4).

To this he demurs and also says that an answer might subject him to "penalties and forfeitures."

The bill is not very artistically drawn, but the *bona fides* of each of the transfers of lots 75 and 84 is questioned by the bill, yet the defendant contents himself in his answer by saying that the lot was conveyed to him for a valuable consideration without notice of any claim of the plaintiff upon the same.

As to lot 54, although it is charged in the bill that Campbell gave Burgess no money for the $4,000 in notes secured by deed of trust to Campbell's clerk, Slater, yet in his answer the defendant simply says that the notes were given him as security for advances made upon the faith thereof, and that at the time of the sale he was the *bona fide* holder thereof.

The defendant, Campbell, does not pretend that he cannot state what he paid for each of lots 78 and 84, and what he advanced upon the $4,000 of notes secured by deed of trust on lot 54.

The whole answer is evasive and disingenuous, and betrays a determination to conceal, rather than disclose the facts.

TESTIMONY.

The testimony of Burgess, on pages 13 and 14, shows that he purchased the lots from Cammacks; took the deeds to his wife, who signed the notes for the entire purchase money, and that no part of it was paid at the time. Shows also the arrangement by which each alternate lot was released from the trust upon the completion of the two houses; that he got releases of lots 54, 75 and 84. That Campbell was a broker and money-lender, and that Slater was his clerk.

At the time the lots were conveyed to Mrs. Burgess she was not possessed of any separate estate. (See p. 19 Rec.)

Lot 75 was conveyed by Burgess and wife to Wm. H. Doe July 11, 1876; Doe was the brother-in-law of Burgess, and the deed was without consideration. On August 26, 1876, it was conveyed by Doe to Campbell at the request of Burgess. It was understood between Burgess and Campbell that Campbell was to put a trust on the property for the purpose of borrowing money from Riggs' Bank. Campbell had informed Burgess that he could get $3,000 for ninety days from Riggs on that property. There was an agreement that upon re-payment of the money Burgess was to have the property back. The money to be borrowed was to be principally for Burgess' benefit. Campbell did get $3,000, and Burgess got some of it. (See record, pp. 14, 15.)

Lots 75 and 84 were deeded to Campbell that he might raise money on them by executing deeds of trust, which he did; witness says he expected to get all the money, except what Campbell kept (p. 20, record).

There was an arrangement that when the money was reimbursed the lots were to be reconveyed. (p. 20, rec.)

Witness says, in answer to question on page 20: "I understood that with the money I had received, and the commissions and interest allowed, that I was indebted to him about $14,650; he held collaterals for much larger sums."

Again, on page 21· "Have you ever turned over any materials to Mr. Campbell to be used in finishing these houses?"

A. Yes, sir; door, sash, blinds, and hardware; I think I did this in the spring of 1877; it was about $900 or $1,000, as near as I can get at it; the material was pretty much enough to finish up the three houses; these were used in the completion of the three houses on the lots mentioned in this bill; this material was turned over for that purpose.

Again, on page 35, Burgess is asked on cross-examination: "What was the condition of house on lot 75 at the time it was deeded by the defendant, Doe, to the defendant, Campbell, as to being finished or unfinished?"

A. My recollection is that it was not completed at that time.

Q. How far had it been completed; what work had been done on the house?

A. I don't remember; but I think I pretty much completed the house afterward.

Q. Was it plastered when the deed was made?

A. I don't know whether it was or not; but, of course, I had it plastered either before or after it was deeded to him.

Q. Did Mr. Campbell expend any money upon that house after it was deeded to him?

A. I think he had a back porch put on, which was not according to the plans; only a few of the other houses had them.

Q. Is that all he did?

A. There may be some little items I do not recollect, I furnished most of the stuff to complete the house; I did most everything to complete that particular house, (p. 35.)

On pp. 38 and 40 the witness says that with commissions and everything (which of course includes interest at 5 per cent. a month or more) there was about $3,000 on lot 75 when he conveyed it to Campbell.

On p. 40 the witness says: "there was a loan of about $3,000 about that time which was released, and which is charged to Campbell as a loan from Riggs."

He is asked, "who paid that loan to Riggs?" He answers, "I presume Campbell did from this $4,000 loan. I did not pay it personally."

It is manifest that although there is some confusion in the testimony of the witness that the transaction as to this lot was that Burgess gave Campbell a deed of trust to secure four notes of $1,000 each, May 27, 1876, and upon these notes Campbell raised from Riggs' bank $3,000. Afterwards he conveyed the house to Campbell in fee, and then Campbell borrowed $4,000 from Tallmadge upon a deed of trust and paid off Riggs' trust of $3,000.

On p. 36 witness is asked, "How was the $3,000 paid May 27th, 1876?"

He answers, "On that day I gave Campbell first deed of trust to secure four notes for $1,000 each on lot 75, square 240, on which Mr. Riggs, I think, let him have the $3,000.

This $4,000 loan, although made in the name of Campbell, after the property was conveyed to him by Burgess, was negotiated by Burgess and for his own benefit. (See Burgess' testimony, p. 40, Rec.)

It is more clearly shown by the testimony of Mr. Tallmadge.

On p. 44 he is asked, "Have you any recollection as to what, if any, security was given for that loan?"

[The loan referred to is the $4,000 loan of the Girard Insurance Company upon lot 75.]

A. Yes, sir; the security given was one of the houses in the row built by Mr. Burgess; I heard Mr. Campbell's cross-examination yesterday; I suppose this is the same loan he referred to with the Girard Insurance Company; it was the eighth house from the west end; Mr. Burgess made application for the loan to me; I don't know whether he had any conversation with Mr. Campbell about it, but I recollect after the loan was made, he said to me he (Campbell) wished George would sell the house, so that he could have his money out of it; this was immediately or soon after—a month or two, perhaps; he meant Burgess when he said George.

Again, on page 44, Mr. Tallmadge says:

Q. Did your firm then effect any other loans for Mr. Campbell?

A. No, sir; I think that was the only loan made in his name.

Q. Do you know why this loan was made in the name of Campbell?

A. Well, at the time Mr. Burgess applied, he said he would like to get about $12,000 on three of these houses in the row, that is $4,000 on each house. I told him I thought he could. I asked him then whose names would be used. He said he did not know; he suggested my name. I suggested that I would not do it; I suggested that he put in the name of some other parties; I think he replied "Very well," and mentioned who he had better have, and I think he mentioned at the time that the title of one was in Mr. Campbell on a temporary loan, and that Mr. Campbell would probably make the paper for the loan on one of the houses. I replied that would be perfectly satisfactory. I

presume I then asked in whose name the other two should be made. He said he didn't know, and asked me if I didn't know of some honest man who would give them back to him, and not take advantage of him. I then suggested the name of a friend of mine, Mr. Young, who would make the paper, and asked him if he was acquainted with him, Mr. Young. I think he remarked that he was not personally acquainted with him; that he knew him by sight. I said to him I was, and would see him about it, which I did. I told Mr. Young the object of it, and that he expected him to redeed it upon clearance, and when he made the paper on the third house in the row, the third one of the three he was to give security on, it stood in the name of Mr. Westwood, and was made in his name; the third house was made in the name of Young; I subsequently sold to Dr. Darrel, and Mr. Young conveyed at once, which was the understanding at the time.

Q. Then in all the conversations you had with Mr. Campbell in relation to the house and lot on which the $4,000 loan was placed, he spoke of the same as Mr. Burgess' property?

A. He did; he never claimed to own the house, but he remarked several times he wished George could sell the house so that he could get his money.

Then follows the testimony of Tallmadge, from 45 to 48 inclusive, to the same effect; and on p. 48:

Q. Witness is here shown four checks marked B, C, G, and H for the sum of $200, $1,050.83, $1,000, and $3,000 respectively, signed by H. H. Tallmadge, Tallmadge & Co., on the Citizens' National Bank, payable to the order of Peter Campbell, and by him endorsed, and is asked to statefor whose account that money was paid.

A. They were on account of loans on that row. I don't know what particular loans—for paying of liens for Burgess.

Evidence of Defendant as to Lot 75.

Defendant Campbell says on p. 55:

"The house and Lot 75 was purchased by me at the earnest request of Mr. Burgess, who desired me to own and occupy a house in the row. On September 1, 1876, I paid for the house the trust notes on it for Burgess, amounting, principal and interest, to $3,075. I paid taxes amounting to about $100 and $425 in money. I paid on that day in all about $3,600. The house at that time was in an unfinished condition. After the deed for lot 75 was given to me I encumbered it by a deed of trust—borrowed $3,000 on it from Riggs & Co., giving my trust note on the house for three months, from September 1st. The note of $3,000 was paid by myself. About the time the house was nearly completed I borrowed $4,000 on it from the Girard Fire Insurance Company, of Philadelphia, through their agent in this city, Mr. L. C. Tallmadge. I gave my own note for it. I was paid the money by Tallmadge's checks—Exhibits D, E, and F I believe to be the checks I received the four thousand upon. I paid the encumbrance that was on lot 75 prior to the time it was deeded to me." (The two loans of $3,000 and $4,000 made on lot 75 were made entirely for my own benefit.)

Q. State whether there was any written agreement between you and Burgess that you would reconvey lots 54, 75, and 84, or any written agreement by which you undertook to hold them in trust for him?

A. No agreement whatever, either oral or written. I did not sign or make any agreement in reference to these houses. Exhibits G and H were for the payment, I think, on lot 70. I finished the house on lot 75 at my expense.

Q. Did you finish any other house in which Mr. Burgess was connected in that row; if so, what other house? (p. 49.)

A. I finished house on lot 75 for myself that I purchased of Burgess, paying for it more than its value, (p. 56.)

Q. With reference to your testimony as to the Girard Fire Insurance Company loan do you recollect who made the application for the loan? (p. 57.)

A. I asked Mr. H. H. Tallmadge, who is here present, if his company would loan me $5,000 on my house and lot 75 when finished, to which he replied, "certainly."

Q. Do you recollect at that interview, or any other, telling Mr. Tallmadge concerning this loan that it was for Mr. Burgess' benefit, and that he should have the house and lot back again?

A. There never was any such understanding or any interview with either Burgess or Tallmadge that this loan was for his benefit. (p. 58.)

Q. Do you recollect whether Mr. Burgess took any part in the negotiation for this loan?

A. At the time I purchased this house from Mr. Burgess, at his earnest request in its unfinished condition, he had, he said, more houses than he could finish. He stated to me, as I was reluctant to purchase, when finished, that the Girard Insurance Company, through their agent, would undoubtedly loan me $4,000 on it, and promised to use his influence with their agent to that end. (p. 58.)

Page 58, Campbell says:

"Mr. Burgess never requested an account of me directly, on the contrary I asked [*him*] to do it, and he said he was not able to do it; Mr. Tallmadge never requested of me an account; I never had any conversation

on the subject of my account with Burgess with Tallmadge."

This is the substance of the testimony on both sides as to Lot 75. Can there be any doubt but that the title was placed in Campbell by Burgess to enable him to raise money for Burgess's use, and that the conveyance is in equity a mortgage?

LOT 84.

This lot was conveyed to Campbell by deed, absolute on its face, by Burgess and wife on the 25th day of October, 1876.

The following is the substance of all the testimony in the case touching this lot.

On p. 19, Rec., Burgess is asked what the real consideration for this conveyance was?

A. I do not know what the consideration was.

Q. Then the conveyances of lots 75 and 84 were by way of securing such advances as Mr. Campbell might make to you in aiding you in your building speculations? (p. 20.)

A. My answer is that they were deeded to Mr. Campbell that he might raise money on them, which he did by executing deeds of trust on them.

Q. For whose benefit did you understand the money that Mr. Campbell might raise on these lots was for?

A. I understood that it was for my benefit, principally.

In answer to another question, he says:

A. I expected to get all the money, except what Mr. Campbell kept.

Q. Was there not an arrangement or understanding between Mr. Campbell and yourself respecting the trans-

fer of said lots 75 and 84 to the effect that when he had been reimbursed all moneys which he advanced you in the course of your dealings, said lots were to be reconveyed to you?

A. I so understood it.

On page 21, he says he turned over to Campbell material "pretty much enough to finish out the three houses," viz.: 75, 84, and 54, and that it was used for that purpose.

Page 35, Burgess says:

Q. What was the condition of lot 84 at the time it was deeded to Campbell?

A. I think it was only "sheathed in," no floors; it was ready for tinning.

Q. Do you know for what amount 84 was encumbered when it was deeded to Campbell?

A. I think it had a first deed of trust for $850, and a second trust held by Campbell.

Q. Who held the first trust?

A. I think Billy Davis, as agent, and after it was deeded to Campbell, he took it up.

Page 40, Burgess says Campbell paid the Davis trust on Lot 84.

We refer to the testimony of Tallmadge, commencing on page 45 and running to page 48, inclusive, which mostly relates to lot 84.

DEFENDANT'S EVIDENCE AS TO LOT 84.

Mr. Campbell, on pages 54–5 of record, says;

"The house on lot 84, at the time it was conveyed to me by Burgess and wife, the walls were up, and the doors and windows were temporarily in some of them; the

floors were not laid, and it was not plastered; after I received the deed for that house I finished it at my own cost, and am now living in it."

He is asked what it cost him after it was deeded him.

A. I cannot say very close, having purchased material and paid for the labor of finishing several houses together, say between $2,000 and $3,000; I completed the house sometime last fall—September, I think; after the delivery of the deed to me no claim was ever made by either Mr. or Mrs. Burgess that the houses belonged to them; the purchase was absolute; I purchased and finished it for my own use, and so informed Burgess at the time of the purchase.

I paid as consideration for the deed the money advanced on second trust notes, and assumed the first trust; no part of the consideration was paid at the time of the delivery of the deed; I could not tell the precise day the deed was delivered; perhaps I might have advanced him some money on that day; I do not recollect now.

After the house was deeded to me, and some time subsequent, I did make a loan on it for, I think, $2,500; about the time the house was deeded to me I paid the encumbrance, which I assumed that was upon it when I purchased it; I paid W. L. Davis the first lien upon that house; I think I took up and paid a lien to Davis on account of Burgess; I believe I paid him for an extension of a lien on lot 81.

On pp. 55 and 56, he says, there was no agreement to hold the three lots in trust.

On p. 56, he says, Burgess turned over to him a lot of doors and window-sash, blinds and hardware, and that he declined to accept the deed until he agreed to do so. $500 would be liberal valuation for them.

On page 57, Campbell says:

I purchased the house (84) at the urgent solicitation of Mr. Burgess, and through him. For the advances I made on the first notes he gave me security, which were then on them, and assuming the first trust of $884.

Q. What was the aggregate of the advances you speak of which was a part of the consideration for that house and lot?

A. About $2,100 and the first trust, making about $3,000 in all.

Q. Were not these advances made by you on Burgess' notes, secured by deed of trust on other property than Lot 84?

A. On Lot 84 only.

Q. Out of the $2,500 loan on Lot 84, of which you speak, were you to let Mr. Burgess have $1,500?

A. I have no recollection of agreeing to loan him $1,500 for any purpose; but certainly not on that house. I don't recollect whether I agreed to let him have $1,500 out of that loan for any purpose.

Q. What did you do with the collateral notes on which you advanced the sum of $2,200? (p. 50.)

A. I think I gave them to Burgess; I don't recollect. They are cancelled wherever they are—I mean the trust notes; there were no collateral notes.

This is the substance of all testimony relating to Lot 84.

We think it conclusively shows that it was not intended to be an absolute sale, and the deed must be held to be a mortgage.

Lot 54.

Burgess and wife made a deed of trust to William R. Slater upon this lot, February 10, 1877, to secure the payment of four notes of $1,000 each, probably made pay-

able to the order of Burgess himself. These notes were placed in the hands of Campbell, as we claim, to raise money upon for Burgess. Campbell himself caused the lot to be sold by the trustee on the day of , 187 , and became the purchaser himself for the nominal consideration of $1,750. The trustee conveyed the lot to Campbell, and he now claims to hold it under that deed.

We claim that he was not a *bona fide* purchaser of the lot, and that he holds the title for the benefit of Burgess' creditors, subject to an accounting between him and Burgess.

Testimony as to Lot 54

Page 19, record, Burgess is asked:

Q. It appears that on the 10th of February, 1877, you and your wife executed a deed of trust on lot 54, in square 240, to Slater; for what purpose was that trust executed?

A. For the purpose of raising money, I made four notes of $1,000 each.

Q. With whom did you hypothecate these notes?

A. Peter Campbell.

Q. How much money did you receive from Campbell on the security of those notes?

A. I don't know the amount yet; I can't answer the question at present.

Q. In relation to lots 54 and 84, what arrangement, if any, was there between you and Mr. Campbell as to reconveyance? (p. 20.)

A. As to 54, he held a trust on; I don't know that any arrangement was necessary in which he held a trust. (p. 21.)

On page 22, Burgess says he furnished material for

finishing the three houses named in the bill, one of which is lot 54.

On page 34 Burgess is asked :

Q. For what sum were the promissory notes described in the deed of trust from yourself and wife of February 10, 1877, to Slater ?

A. I think four notes of $1,000 each—the first deed of trust on lot 54, square 240.

Q. What did you do with these notes ?

A. I put these four notes in the hands of Mr. Campbell, to be held by him as collateral security for moneys advanced to me and to be advanced. *I don't think he advanced but* $600 *or* $1,000. The paper will show He was to advance me $2,500 when the house was under roof. I might state further, notwithstanding he held them as collateral security, he suffered the property to be sold out under these notes, and bought it in himself through the trustee, who was his clerk, for a great deal less than its value.

On page 36 Burgess is asked:

Q. What was the condition of house on lot 54 at the time of the deed of trust to Slater mentioned in the bill ?

A. I think the house was roofed in at the time.

Q. The house was not plastered or floored ?

A. No.

Q. Were you present at the sale ?

A. Yes.

Q. Did you make any objections to the proceedings of the sale ?

A. I don't remember that I did. Mr. Campbell was not there for me to make any objections to.

Q. Do you remember who was there besides yourself ?

A. The trustee, the auctioneer, I think Mr. Caldwell, and I believe Mr. Simpson, and perhaps one or two others were all.

Q. Was either Hewett or Cease there?

A. I think not.

Q. Did you make any efforts to secure a purchaser?

A. I don't think I did. In the first place I don't think he had any right to sell, for the reason that the deed-of-trust papers were only held as collateral for money advanced, and to be advanced. I did not consider him the owner of the deed-of-trust paper.

Q. Do you know who finished the house on lot 54?

A. Mr. Campbell had it finished, I believe. I furnished some of the material for it. (p. 37.)

Q. When the notes secured on lot 54 were given to Mr. Campbell, and which you say were given only as collateral security, did you give him any note or evidence of your indebtedness to him on account of these collaterals?

A. I don't remember. I knew one time Tallmadge gave a note for $242, which I endorsed and which was on account of paper given previous to that. I don't remember whether I gave him any note or not. I simply gave him the collaterals. (p. 43.)

Q. How do you explain the item of $1,750, under date of August 7, 1877, in the debtor column in Exhibit A? (p. 36.)

A. The proceeds of lot 54, under sale of deed of trust, I suppose was put in the memorandum at my instance; I think that was the gross amount of sale. I have not given in Exhibit A any credit for the expenses of that sale. I don't think they could have been much, because the trustee was Mr. Campbell's clerk.

We refer to the testimony of Tallmadge in connection with this lot to show that Campbell admitted his dealings with Burgess in relation to all these houses to be in trust to secure advances and loans made to him, and not an absolute deed.

DEFENDANT'S EVIDENCE.

Mr. Campbell, on page 52, says: The deed in its present form was given to me and recorded. The notes described in the original deed were given to me at the time the deed was delivered. These notes were given to me as security for advances made and to be made on account of George Burgess. There was no specified amount named to be advanced. I had made advances up to and prior to the maturity of the notes. These advances had not been repaid to me. When the notes became due I had the property sold for default in the payment of the notes in the regular way. I had the property advertised, and it was sold under the trust, and it was bought in, I being the purchaser—$1,750 was the bid, I believe. A deed was executed to me by the trustee. The deed now shown me is the deed. (p. 54.)

This was an unfinished house when it was sold; walls up and roofed in. There was no brick bay-window in front; I had that put it myself. The plan of the house contemplated double bay-window. After the deed was given I waited until the wind blew the roof off, then I finished it and sold it. No objections that I knew of were made by either Burgess or his wife at the sale. They never requested me to postpone the sale, and never made me an offer to redeem the property.

On page 55 Campbell says there was no agreement,

oral or written, that he held lots 54, 75, and 84 in trust for Burgess.

Q. What amount of money did you advance on the security of the deed of trust to Slater? (p. 56.)

A. About $2,000; I should think a little more on lot 54, R street house.

Q. Reflect a little, and see if $600 was not all you advanced?

A. It needs no reflection; I advanced about $2,000.

Q. Were you in the city when lot 54 was sold under said deed of trust?

A. I was not.

Q. Where were you?

A. I was in the State of New York or Vermont.

Q. Mr. Slater was at that time your clerk, I believe?

A. Yes, sir.

Q. Now deceased?

A. He is.

This is the substance of the testimony as to lot 54.

The facts about which Burgess and Campbell do not disagree are that Mrs. Burgess made a deed of trust on lot 54 to Slater, who was Campbell's clerk, to secure four notes of $1,000 each, made by Burgess, payable to his own order; that these notes were given to Campbell. It is not pretended that Campbell then paid Burgess the amount of the notes. Campbell says he took these notes as security for money advanced and to be advanced, and when the notes were due he had the property sold and bid in by the trustee for him.

It is very certain, from the testimony of Campbell, that he did not buy these $4,000 in notes. He only claims to have advanced $2,200, and some of this before and after the notes were given to him.

Burgess says he got but $600.

Whichever is true, it is perfectly certain that Campbell took the notes as collateral for advances made and to be made to Burgess, and the transaction was not *what* it purports on its face to be. We claim that Campbell holds the lot as the trustee for Burgess' creditors, subject to an accounting between them.

The general facts shown by the record, and deductions from them;

1. That in April, 1876, Burgess, among other building enterprises, undertook to build twenty houses on square 240, in the city of Washington. That he purchased the land from John and Edward Canmack. That he paid no money at the time of the purchase, which was entirely upon credit. That the entire purchase money was evidenced by the promissory notes of his wife, and secured by deeds of trust upon the property purchased, the grantors relying upon the increased value of the land by the erection thereon of the contemplated houses.

This is all shown by the testimony of Burgess on pp. 13 and 14 of the record. It is not denied by the defendant, Campbell, either in his answer or in his testimony.

The equity rule that the plaintiff must establish his essential facts by the equivalent of two witnesses, applies only where the facts are denied in the sworn answer of the defendant. Where the facts are not *denied* in the answer, the uncontradicted testimony of one credible witness is as good as a dozen.

2. That at the time of the purchase of the land by Burgess his wife had no separate estate of her own.

This is also testified to by Burgess, on page 19.

"Q At the time the lots in square 240, which you improved, were conveyed to your wife by the Canmacks, was your wife possessed of a separate estate?

"A. I can't say that she was; at the time the first lots were conveyed she was not."

This is not denied, either in the answer or in the testimony of the defendant; so it may be treated as an established fact.

3. That Burgess was embarrassed at the time of the purchase from the Canmacks.

This is shown by the testimony of Ceas, the original plaintiff, who says that $936.87 of his judgment was for money loaned as far back as 1872, and $200 for money loaned as far back as April 16th, 1875, (see Rec., p. 12,) and the testimony of Hewett, the present plaintiff, who says: "I originally held two notes against Burgess for $4.000 each, the original amount; the judgment filed in this cause is the result of that note; I tried to get the money on the notes; I received altogether, from the time I lent the money to the present time, $5,000; the judgment for $5,080.28, with ten per cent. from April 27, 1877, till paid, and costs, is the balance due on the two notes; and I endorsed a certain note for Mr. Burgess for $255, and which I had to pay; I also gave Mr. Burgess an order on Mr. Fugett for about $500 for lumber, and some small sums I loaned him, all of which made up the amount of the judgment." (Rec., p. 12.)

This statement of his account by Hewett shows that the original loan must have been much back of April 1, 1876.

Also the testimony of Burgess in the statement of his account with Campbell, which shows that he commenced borrowing money from Campbell, April 6, 1876, and kept up a brisk line of discounts until Dec. 30, 1876.

(See rec. p. 22.) See also the testimony of Tallmadge on pp. 48—9 rec.

From all this testimony it is very evident that at the time of the purchase from Camnack, Burgess was heels over head in debt.

Men carrying on large business operations as Burgess was, and constantly in need of raising money, do not put the titles to the property upon which they rely as a basis of credit, in the names of their wives, unless it be necessary to protect it from creditors. Of course such a transaction would not be likely to stand the test of a proceeding in equity, but it sometimes answers for a present shift.

4. From the foregoing uncontradicted facts, I deduce the conclusion that Burgess caused the titles to these lots to be put in the name of his wife to protect them from his creditors.

Assuming these facts to be established by the evidence, as they certainly are, it is too plain for argument or the citation of authorities, that whatever Burgess' motive may have been, the transaction was in fact a fraud upon his creditors, and a bill in equity might at any time have been maintained by a judgment creditor, who had had a return of *nulla bona*, to subject whatever interest Burgess or his wife might have had in the property.

5. That upon entering upon this undertaking Burgess commenced dealing with Campbell, who was then a money broker, so to raise him the necessary money to float his enterprise.

The first loans were made upon other securities, but when Burgess got his houses well under way, late in the summer and fall of 1876, Campbell began to deal with, or for him upon the faith of the coming houses.

This is shown by the account of their dealings given by Burgess, commencing on p. 16, rec., and running all through his testimony, and it is not denied by Campbell.

6. The testimony already cited shows conclusively that the deeds for lots 75 and 84, and the trust deed upon lot 54, were not *bona fide* purchases, but were taken by Campbell to enable him to raise money for Burgess from time to time, or to secure advances already made and to be made. It is not claimed that at the time of any pretended purchase, he paid the nominal amount thereof to Burgess, or that they had any settlement in which the consideration was charged up.

It is stated by Burgess and admitted by Campbell that after all these conveyances he furnished to Campbell building materials of all kinds necessary to complete the houses. This is admitted by Campbell, and they differ only to the amount of the material.

The testimony of Tallmadge shows that Burgess confided other of these houses to other persons for the purpose of raising money, as he dared not use his own name.

The testimony of Tallmadge also shows that these transactions with Campbell were in the nature of trusts, or at most mortgages to secure money loaned.

The fact is when Campbell found himself in possession of the titles to these houses he concluded that it was easier and more profitable to hold on to what he had, than to enter into an accounting with Burgess; and hence after amusing him for a time with promises to do so, he throws off his mask and boldly tells him that he does not propose "*to put himself in a hole*," which is but an elegant way of saying that he is not fool enough to surrender the advantage he held by making evidence against himself.

Assignment of Error.

The court erred in dismissing the bill. There should have been a decree in favor of the plaintiff in conformity to the prayer of the bill, and a reference to the auditor to state the account between Burgess and Campbell, with a direction to ascertain and eliminate all usurious interest charged by Campbell, whether the same had been assented to by Burgess or not.

Argument.

Assuming the facts to be as we claim, what are the legal consequences?

The deeds for lots 54, 75, and 84 are in equity mortgages, and Burgess or Mrs. Burgess, in the absence of fraud on their part, would be entitled to an accounting with Campbell, and upon payment of the amount due him, with legal interest, to have a reconveyance of these lots, or upon their failure to do this Campbell could not acquire a complete title without a foreclosure of the mortgage.

Pugh *v.* Davis, 96 U. S., 336-7-9.

But this suit is not brought by Mr. or Mrs. Burgess, and it was contended in the court below that as the legal title was in Mrs. Burgess and conveyed by her to Campbell, the *creditors* of Burgess will not be permitted to attack Campbell's title, and so the chancellor thought.

Let us see if this is so: First, then, what was the character of Mrs. Burgess' title?

The testimony shows that at the time the Cammacks conveyed these lots to her she had no separate estate, money, or means of any kind. But Burgess made the contract with the Cammacks for the purchase himself,

and that she was not a party to it, and that having settled the terms upon which the property was to be conveyed, in order to enable him to carry on his operations without annoyance from his creditors, he caused the deeds to be made to his wife. It is true that he paid no money at the time of the purchase, but the Cammacks sold alone upon the security of the deeds of trust and his promise to build houses upon the lots, the *credit even* of the wife was not considered. Moreover, from the beginning until the close, he dealt with the property as his own, pledging it for money borrowed for his own use in his business and selling it. Whenever he desired a deed of trust or an absolute deed, his wife executed it, and he took and used the proceeds.

We claim that Mrs. Burgess' title was that of a mere trustee.

Where property is purchased by the husband with his own means, and he causes the title to be made to his wife, if he be not indebted at the time, and if it appear from the circumstances that the husband did not intend an advancement, but simply that the wife should hold the title, she will be held to be a trustee for the husband. (See Bish. on the Law of Mar. Wom., vol. 2, secs. 118, 120.)

Cotton *v.* Wood, 25 Iowa, 43.

Parrish *v.* Rhodes, Wright, (O.,) 339.

If land be purchased with money or other thing of value belonging to the husband, and the title is made to the wife, it becomes liable to his antecedent debts, though as against him and his heirs at law the conveyance is good.

1 Bish., Mar. Wom., secs. 743, 746.

2 Ibid., 88.

A conveyance made to defraud creditors is binding on the grantor and his heirs, and all the world, save the creditors who are intended to be defrauded.

Cushaw *v.* Cushaw, 5 Md., p. 50, 51;
Drum *v.* Painter, 3 Casey, at p. 149;
Lacrosse & Milwaukee R. R. *v.* Seegar, 4 Wis., p. 285;
Fox *v.* Willis, 1 Mich., 325;
Fargo *v.* Ladd, 6 Wis., p. 117, and cases cited;
1 Bish., secs. 745, 752;
Bean *v.* Smith, 2 Mass., 252;
Parrish *v.* Murphree et al., 13 How., p. 99.

Land purchased by the husband, and paid for by him, and conveyance to his wife to defraud creditors, is void as to creditors, contemporaneous or subsequent.

1 Bish., 745, 746;
Guthrie *v.* Gardner, 19 Wend., 414;
Parrish *v.* Rhodes et al., Wright, (O.,) 339;
Eddington *v.* Williams et al., Ibid., 439;
1 Bish., secs. 746, 747;
U. S. *v.* Stiner, 8 Blf., 549;
Smith *v.* Kehr et al., 7 N. B. R., 104;
Sedgwick *v.* Place, 5 N. B. R., 587;
Parish *v.* Murpree, 13 How., 92.

The law presumes fraud where a party indebted makes a conveyance with the secret understanding that it is for his benefit.

Lukings *v.* Aird, 6 Wall., 78.

Where property is purchased on *credit*, and the deed is made to the wife, and note and mortgage executed by her for the purchase money, she holds *in trust* for her husband's creditors. *The credit of the wife is nothing in the eyes*

of the law, and in order to protect property conveyed to a married woman from her husband's creditors, *it must clearly appear that it was paid for with her own separate estate.*

Barringer *v.* Stever, 49 Penn., 129;
Curry *v.* Bott, 53 Penn., 403;
Robinson & Co., *v.* Wallace, 39 Penn., 129;
Hallowell *v.* Horter, (11 Casey,) 35 Penn., 375.

These decisions are made under the Pennsylvania married woman's act of 1848, which provides that "All property of whatever kind or nature, which shall accrue to a married woman during coverture," shall be exempt from her husband's debts, &c.

The terms of the Pennsylvania act are more liberal for the woman than ours.

If Mrs. Burgess held the property in trust for her husband, and mortgaged it to Campbell for his benefit, his creditors may pursue his equity in it wherever it goes.

Courts of Equity will always entertain a bill filed for the redemption of pledged or mortgaged property, cause a full accounting, and compel a delivery up of the securities, upon a repayment of the amount found to be due thereon. And in stating the account, usury paid or allowed, will be treated as payment upon the principal and legal interest.

Fonblanque's Equity, Book 1, C. 4, § 7, p. 200;
Bosanquet *v.* Dashwood, Ca. Temp. Talbot. (Forester,) p. 37;
Bell *v.* Price, 1 Vernon, 467;
Peters *v.* Mortimer, 4 Edward's Ch., (N. Y.,) 280;
Dye *v.* Denham, 2 Johnson's Ch., (N. Y.,) 182;
Ward v. Sharp, 15 Vermont, 115;
Day v. Cummings, 19 Vermont, 540;
Nichols v. Bellows, 22 Vermont, 587.

If Campbell took these conveyances, knowing (as we think the whole circumstances of the case show he did) that these titles were put in Mrs. Burgess to defraud the creditors of Burgess, he was a participator in the fraud and his mortgages are void, and he is, as against Burgess' creditors, entitled to nothing thereon.

Robinson v. Holt, 39 New Hamp., 557, and cases there cited;
Alexander v. Todd, 1 Bond, 180, 181;
U. S. v. Stiner, 8 Blatchford, 549;
Sexton v. Wheaton, 8 Wheaton, 242;
Thomas et al. v. Jeter et al., 1 Hill, (S. C.,) 382;
Lowry v. Pinson, 2 Bailey, (S. C.,) 329;
Morseley v. De Mattos, 1 Burrows, 474, 475;
Parrish v. Murphee, 13 Howard, 99;
Magniac v. Thompson, 7 Peters, 395;
Bean v. Smith, 2 Mason, 299;
Mattingly v. Nye, 8 Wallace, 372; and,
Clement v. Moore, 6 Wallace, 312.

As to the amount in controversy, the evidence is not as explicit as it might be, but sufficiently so to show that Campbell took advantage of Burgess' embarrassed and helpless condition, and the fact that he could deal with his property in his own name, to charge the most outrageous and extortionate rates of interest, taking the notes of Burgess, secured by deeds of trust upon his own property, and borrowing money upon them himself, and then charging Burgess for the same money five per cent. per month, and sometimes more, besides the interest at ten per cent. per annum, which the trust notes bore.

The bill charges that he retained $3,000 in usurious interest. In his answer he refuses to say whether this is so, or not, leaving the inference that it was true, and although this alone would not, perhaps, justify a decree

against him, we are justified in considering the evidence in the case in connection with this damaging circumstance. If it had not been true, he would have been swift to say that it was false.

Nor does Campbell, in his testimony, undertake to state the account between Burgess and himself.

Burgess does state the account between them on pp. 17 and 18, showing a balance against Campbell of $6,314.09.

But the court will not be concerned to know the exact amount that Campbell is properly chargable with, so that it is apparent that it exceeds $2,500. The true state of the account would probably have to be ascertained by the auditor upon a reference for that purpose by the court.

The fact is patent, from the evidence in the case, that the larger part of the money loaned Burgess by Campbell was obtained upon the trust notes and the titles to the property furnished by Burgess to him for that purpose, and that he has pocketed enormous usury upon the money obtained upon Burgess' own securities, and now retains and claims to own the three valuable houses and lots confided to him for the purpose of enabling him to raise money for Burgess.

It seems to me that it cannot be possible that this Honorable Court will permit the defendant to enjoy the fruits of these outrageous frauds without requiring him to account with the creditors of his victim.

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Counsel for Appellant.

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109-103

OFFICE SUPREME COURT U. S.
FILED
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IN THE SUPREME COURT OF THE UNITED STATES.

ROBERT C. HEWITT,
Appellant,
vs.
PETER CAMPBELL ET AL.,
Appellees.

Brief for Appellee, Peter Campbell.

W. E. EDMONSTON,
Counsel for Campbell.

R. O. Polkinhorn, Printer, Washington, D. C.

IN THE

Supreme Court of the United States

ROBERT C. HEWITT,
Appellant,
vs.
PETER CAMPBELL ET AL.,
Appellees.

Brief for Appellee, Peter Campbell.

The appeal in this case is taken from a decree of the Supreme Court of the District of Columbia, holding a General Term, affirming a decree of a Special Term of said court, which dismissed the bill of complaint filed by one Samuel Ceas, and also the petition filed in the same case by Robert C. Hewett. The latter alone is the appellant here.

The bill was filed August 24th, 1877, by Samuel Ceas, as a judgment creditor of one George Burgess. Peter Campbell, one of the defendants, and the one against whom alone relief was prayed, was served with process September 7, 1877.

On October 4, 1877, Hewett, the appellant, recovered judgment (by default) against the said George Burgess, and on October 8th, 1877, filed his petition as a judgment creditor of George Burgess, praying to be allowed to become a party complainant in the suit begun by said Ceas.

On this petition the court made this order: "R. E.

Hewett is allowed to become a party complainant as a judgment creditor of defendant" (Pr. Rec., page 7.)

The allegations of the petition of Hewett relate only to the recovery by him of his judgment, and the issue and return of the *fi. fa.* thereon.

There is no statement in the petition to the effect that the petitioner adopts the allegations of the bill, as is usual in such cases, and no process, notice or order requiring an appearance or answer to the petition is prayed for in the petition, and none issued upon it.

Assuming that the joinder, as complainants of judgment creditors holding separate and distinct judgments, is "permitted by the mere indulgence of the court for its convenience and to save expense," as stated by Justice NELSON, in *Seaver* vs. *Bigelow*, 5 Wallace, 210, it would seem to be necessary for each petitioner to show in his petition a case for relief, either by repeating, in substance, the allegations of the bill or by *expressly* adopting them.

Especially would this seem to be necessary, where, as in the case at bar, certain acts are set up as done in fraud of the creditor filing the bill—for the acts complained of by the creditor filing the bill, might well be fraudulent and void as to him—and yet for various reasons be entirely innocent and valid as to the creditor coming in by petition—as for example, the petitioning creditor might have lent his money on other property than that mentioned in the bill—as was the case with this petitioning creditor, (Record, p. 12); or he might have become a creditor long after the acts which are complained of in the original bill as fraudulent, were done,—and this is the predicament in which the record leaves this petitioner.

If a petitioning *judgment* creditor must stand upon the case made by the allegations of his petition, (including, of course, what are incorporated into the petition by reference

to the bill, where there is such reference), there is absolutely nothing in the petition of Hewett upon which the court below could properly have granted any relief in the premises, and certainly not any against Campbell, and therefore the petition was properly dismissed.

But assuming that the petitioner Hewett became by force of the order of the court, above quoted, a co-complainant entitled to the full benefit of all the allegations contained in the original bill, it is submitted that the court below properly dismissed the original bill and Hewett's petition.

The general object of the bill of complaint seems to be to charge Campbell, in some way, with the payment of the judgments against Burgess. Upon what particular theory this is to be done, seems to be not clearly out-lined by the frame of the bill.

The prayers of the bill seem to be framed mainly for the purpose of having an account stated between George Burgess and Campbell—not with respect to their particular dealings about the property mentioned in the bill,—but with respect to their *general* dealings with each other.

It will not be claimed that this bill can be maintained by a judgment-creditor of Burgess simply on the ground of an indebtedness by Campbell to Burgess—for the remedy at law by an attachment on the judgment and garnishment of credits, would be ample and complete.

This difficulty is sought to be met by making in the bill certain vague and indefinite allegations; some of them being mere statements of legal conclusions, which, if supported by proof, might bring the case within some of the well known subjects of equitable cognizance.

Mere colorable suggestions of fraud, etc., however, unsupported by proof, will not give jurisdiction in equity where, but for them, the remedy at law would be clear.

Lewis vs. *Cocks*, 23 Wall., 469.

Nor can the allegation in the bill, "that in the dealings between said Campbell and George Burgess, the former charged and received of the latter interest at ruinously usurious rates," give equity jurisdiction.

The Revised Statutes, D. C., § 716, provide the only remedy for the recovery of unlawful interest taken and received—and it gives the right to bring a suit for the recovery of such interest, as a personal privilege, "to the person or his personal representatives," who paid the unlawful interest—but, "the suit to recover back such interest, shall be brought within one year after such unlawful interest shall have been paid or taken."—A creditor of the person who has paid the usurious interest cannot maintain the suit for its recovery or have it applied to his debit.

The statute having created a new right, and declared the remedy, the right can only be that which the statute prescribes.

Farmers' National Bank vs. *Dearing*, 91 U. S., 35;
Barnel vs *National Bank*, 98 U. S., 558.

It must appear by the suit that the unlawful interest was paid or received within one year prior to suit begun.

Eastwood vs. *Kennedy*, 44 Md. Rep., 563;
Opinion of Court of Appeals of Maryland construing § 716 Revised Statutes, D. C.

From the bill, it does not appear what constituted the usury, or that the alleged usurious interest was received or taken within a year prior to the service of process, in this case on Campbell.

Ths testimony of Burgess is the only testimony relating to the alleged usury, and his tetsimony shows that all of the alleged usurious interest, except seventy dollars ($70), was taken more than one year prior to September 7th, 1877, the day on which process was served on Campbell (printed

Record, pp. 22, 23), and that the total he claimed to have paid as usury was much less than the jurisdictional amount necessary for an appeal to this court (Ibid), and much of it was probably for commissions to Campbell in his capacity of a broker, for procuring loans to be made by others than himself to Burgess. (Printed Record, p. 44.)

The statement in the bill about usury, it is respectfully submitted, does not make a case for equity, and cannot be of benefit to the complainant.

The allegations in the bill, which give color of equitable jurisdiction, but which, it is claimed by defendant, are unsupported by the necessary proof, will be considered in the order in which they occur in the bill.

I.

The 5th paragraph of the bill states that George Burgess "has equitable interests in certain real estate hereinafter mentioned,"

The answer of Campbell denies that Burgess has interests of any kind, legal or equitable, in the real estate referred to, and states that he, Campbell, is the owner thereof in fee simple.

Campbell is sustained by the subsequent statements of the bill, for in the 7th paragraph it is stated that George Burgess and his wife, on the 11th of July, 1876, conveyed said lot 75 to Wm. H. Doe, who, by deed dated August 26, 1876, conveyed the same to Peter Campbell; and in the 8th paragraph it is stated that on the 25th of October, 1876, George Burgess and wife conveyed lot 84 to Peter Campbell, who says in his answer to these paragraphs, that said lots were conveyed to him in fee simple *bona fide*, and for a valuable consideration.

With respect to lot 54, the 9th paragraph of the bill states that George Burgess and wife in February, 1877,

pretended to convey to Slater in trust to secure notes payable four months after date thereof, and that Slater, pretending to act as trustee, sold said lot to Campbell, and executed a paper purporting to be a deed, and which on its face conveyed said lot to Campbell.

The deeds relating to lots 75 and 84, which are mentioned in the 7th and 8th paragraphs of the bill, and which put the title of said lots absolutely in Campbell, are not sought to be impeached. No fraud is alleged as to them and no facts stated that raise an implied or resulting trust. Moreover, if George Burgess ever had any interest in said lots by reason of an implied or resulting trust, that interest was conveyed by the deeds in which he united with his wife, and through which deeds Campbell claims the title.

II.

The 6th paragraph of the bill alleges that George Burgess "fraudulently caused the lots mentioned, together with others, to be conveyed to his wife" by John and Edmund Cammack.

The answer of Campbell states that he has no knowledge of the allegations of this paragraph, but requires strict proof of their truth, if they be material.

If the allegation of fraud be true, the only effect would have been to put the title in George Burgess as the real owner instead of in his wife, the apparent owner, even so far as persons having notice of the frauds are concerned. As both Mr. and Mrs. Burgess united in the deeds under which Campbell claims *before* the judgments were recovered, and as the deeds to Campbell for lots 75 and 84 are not assailed, the statements in the 6th paragraph cannot affect Campbell upon the case made by the bill.

Upon the theory advanced in the plaintiff's brief that

these conveyances, though absolute in form, were in fact, only mortgages—the truth of the allegations of fraud in the conveyances from the Cammacks to Mrs. Burgess—become material and necessary to plaintiff's case and must be established by proof, for in no other way could even a defrauded creditor of George Burgess treat the absolute conveyances made by his wife, of property the record title of which was in her as in legal effect the mortgages of her husband. It may be proper therefore to consider whether fraud is established.

It is plain that the petitioner cannot impeach these conveyances except for fraud as to *him*.

There is no allegation in the bill or petition showing that the conveyances were fraudulent as to the *plaintiff*, or as to petitioner Hewett, and no allegation that the petitioner was at the time a creditor of Burgess, nor any allegation showing how the conveyances complained of, did or could defraud the petitioner—nor any allegation that the conveyances were made with *intent* to defraud the petitioner; on the contrary, it appears that petitioners' judgment was recovered more than a year after the alleged fraudulent conveyances, and there is nothing in the allegations or proofs, to show that he was a creditor at the time of the said conveyances. The clear inference from the deposition of petitioner (Rec., p. 6) is, that he was not then a creditor of Burgess.

Intent or *design* must be shown to constitute actual fraud, and fraud is not to be presumed but must be shown and proved by the party who alleges it.

Conrad vs. *Nicoll*, 4 Pet., 296.

Approved in *U. S.* vs. *Arredondo*, 6 Pet., 692.

Fraud is not presumed either as a matter of law or fact.

Tucker vs. *Moreland*, 10 Pet., 78.

There is no proof whatever of an *intent* to defraud the plaintiff or others, nor proof that the conveyances were made "in order that George Burgess might not be embarrassed by his creditors;" nor proof that Burgess was at the time embarrassed; nor that any creditor was pressing him.

There is no proof that George Burgess furnished any money in the tranaction, nor that he, in any way, impaired his ability to pay his debts, by the transactions complained of; nor is there any proof that Mrs. Burgess was not possessed of a separate estate at the time the deeds to her were made.

The omission, on the part of the plaintiff, to allege and prove these necessary facts, if facts they were, is very significant in this case.

Geo. Burgess, the man who is charged with the fraud, is a willing witness for plaintiff; and the plaintiff, who becomes a witness, is shown, by the testimony, to have been for many years prior to, and at the time of the filing of this suit, on the most confidential, personal and business relations with Burgess,—so confidential that Burgess does not know but that he told Ceas *everything*.

This suit was the result of their joint labor and efforts; together they talked it over and gathered the *data* for its prosecution.

There is, therefore, no excuse for the plaintiffs not making full, clear and unequivocal proof of fraud—if there was fraud; and every presumption is to be made against the existence of fraud; especially of fraud on the *plaintiffs*.

III.

The title of Campbell to lot 54, is assailed in the ninth paragraph of the bill.

(*a.*) Because, as is alleged, the amount of the note, which

the deed of trust to Slater was intended to secure, is not stated in the deed of trust.

There is no proof of the allegation. On the contrary, it appears, by the testimony of Campbell and Burgess, that the amount of the notes was $1,000 each; and the defendant produces the original deed of trust wherein the *amount* is written in the handwriting of Burgess—and swears the deed is in the form in which it was delivered before the record of it.

(*b.*) The title to lot 54 is also assailed in the bill because, as "the plaintiff is informed and believes the above transaction [referring to the deed of trust on lot 54] was part of a scheme between said Campbell and said George Burgess, whereby the latter should be enabled to elude, mislead, and defraud his creditors; and that in truth and fact no money was advanced by said Campbell or by any other person to said George Burgess on the security thereof;" and that said Slater, in furtherance of said scheme, pretended to sell said lot 54 to said Campbell for $1,750.

No proof, *whatever*, was adduced to support the allegation of fraud, or the scheme to defraud, in respect to the conveyances of lot 54 to and from Slater, or in the sale of said lot by him, as trustee under the deed of trust to him.

The fraud, and the scheme to defraud, is denied by Campbell, and by Slater, in their respective answers—which are sworn to. It is disproved by Burgess and by Campbell, the latter of whom states clearly, both in his answer and in his testimony, the nature of the transaction. The only variance upon this subject between Burgess and Campbell is as to the amount advanced—the former admitting from $600 to $1,000 to have been advanced, while the latter shows the amount to be about $2,000.

It may be noted here that this is the only charge of fraud

made against Campbell in the bill, or which he is charged as being privy to, or having notice or knowledge of.

Campbell, in his answer, says he was the *bona fide* holder of said notes—which were given to him for advances made thereon by him, without notice of any other claims or demands upon said lot; and he pleads the deed of trust, and the sales and conveyances thereunder, as terminating all the interest of Mary Burgess, and of Geo. Burgess, (if George ever had any), in said lot 54.

IV.

The 9th paragraph of the bill avers, upon belief—

> "That, notwithstanding the transfer of said lots 54, 75, and 84, as aforesaid, by deeds, aforesaid, on their face, and for, apparently, consideration, there is a secret understanding and agreement between said Campbell and Burgess to the effect that, when the latter shall have re-imbursed the former, all moneys advanced by him, in respect of his building operations, said lots, with improvements, are to be reconveyed to him, in fee, free of encumbrances;" and that "said Burgess, in the course of his dealings with said Campbell, has fully repaid him all moneys advanced as aforesaid, and is now entitled to have said Campbell re-convey said lots"

These allegations are explicitly denied by Campbell in his answer. He therein states that there was no verbal or written understanding or agreement—and for that, there was no agreement in writing signed by him to convey, he asks the benefit of the statute, &c.

The statement in the bill about the agreement to re-convey, if true, is no evidence of fraud. (Alex. Brit. Stat., pp. 386–7, and cases cited.) The agreement, as stated in the bill, is a naked agreement, by the owner of land, to convey it—and, as such, is invalid, unless in writing, signed, &c., as required by the statute.

Howland vs. *Blake*, 97 U. S., 628.

There is no evidence, whatever, that there was *any* agreement in *writing* to convey, and there is no evidence showing, or tending to show, with respect to lot 54, any understanding, or agreement of any kind, to convey it to Burgess, or any one else; and the only evidence as to an agreement by Campbell to convey lot 84, is the testimony of Burgess, which is only as to what *he understood;* and that, to say the least, is vague and equivocal, and is entitled to no weight against the positive testimony of Campbell.

The alleged understanding, or agreement, so far as lot 75 is concerned, is also explicitly denied by Campbell, and has only the uncertain testimony of Burgess to support it. It is, indeed, true, that Tallmadge swears that, in a conversation with Campbell, after the deed the latter stated he wished Burgess "could sell the house so that he could have his money out of it."

This, however, is not evidence of an agreement to reconvey, and is equivocal and of little value under any aspect of this case, and is denied by Campbell.

See *Hubbard* vs. *Stetson*, Sup. Ct., D. C.; 3 Mac. A., 113.

It seems clear that this case cannot be maintained on the ground of an *agreement* by Campbell to convey said lots to Burgess, as well because the agreement was not in writing as because the proof does not establish such agreement.

V.

The plaintiff in his "Brief" filed in the court below, assumed to treat the conveyances to Campbell as mortgages.

The bill does not state them to be mortgages, on the contrary shows them to have been absolute conveyances.

The bill does not state facts which would raise the legal

presumption that the transaction was a mortgage with respect to either of these lots. No *loan* is alleged to have been made by Campbell, on any of *these* lots.

It appears from the testimony of Burgess that Riggs & Co. held an incumbrance of $3,000 on lot 75 when the same was conveyed to Campbell. Campbell swears that he purchased lot 75 at the request of George Burgess, who desired him, Campbell, to own and occupy a house in the row (Pr. Rec., p. 55), and that he paid therefor $425 in cash, paid some taxes on the property, and the debt on it held by Riggs & Co., amounting in all to about $3,600.

An absolute conveyance with privilege of re-purchase is not a mortgage.

Conway's Extrs. vs. *Alexander*, 7 Cr., 218.

Such privilege of re-purchase to be binding must be in writing.

Holland vs. *Blake*, *supra.*

It appears from the testimony of Burgess that when lot 84 was conveyed to Campbell, there was a first incumbrance of between $800 and $900 held by Wm. L. Davis, and that Campbell held the second incumbrance, amounting to about $2,200, making in all about $3,000 incumbrance. Campbell swears he purchased the house, paying for it the incumbrance on it held by Davis, and by himself, respectively.

This could, at most, be considered only as a conveyance in satisfaction of an antecedent debt.

Such a transaction does not constitute a mortgage.

3 Leading Cases in Equity, 637, and cases cited.

And that the conveyance of lot 84 was considered by Campbell as an absolute sale, is shown by his finishing the house on it at his own expense, and occupying it.

The theory that lots 75 and 84 were conveyed to Campbell, that he might raise money on them for Burgess' benefit, is absurd, upon the testimony of Burgess, for it appears Pr. Rec., pp. 19 and 20 that Campbell took lots 75 and 84, each subject to a larger incumbrance than the amount Burgess says Campbell was to raise on the lots for Burgess' benefit; and this theory is contradicted by the other evidence in the case.

Campbell's testimony is plain and explicit in the support of the deeds, as expressing the real transactions.

The deeds must, therefore, in this case, be held to express correctly the intentions of the parties, and to show the true nature of the transactions.

Howland vs. *Blake*, 97 U. S., p. 626;
Faringer vs. *Ramsay*, 2 Md. Rep., 365.

The case has been considered, in what precedes, as if George Burgess was the owner of lots 75 and 84, when the deeds for the same were made to Campbell.

The record shows that he never had the title in himself, to either of the lots.

Lot 75 was conveyed to Campbell by one Doe, to whom Burgess and wife had conveyed it.

The conveyance from Burgess and wife to Doe is not impeached by the bill, and it terminated all right of George Burgess, if he ever had any; and the alleged agreement by Campbell to convey, like other agreements to convey land, cannot be enforced if not in writing.

A similar impediment is in the way of considering the deeds to Campbell, for lots 84 and 54, as mortgages, viz: the fact that the title was never in George Burgess.

This impediment is recognized by plaintiff, and is sought to be removed by the allegations of fraud, made with respect to the conveyances to Mrs. Burgess, but which fraud,